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No. 86-270

In The Supreme Court of the United States

OCTOBER TERM, 1986

SAN FRANCISCO ARTS & ATHLETICS, INC. and THOMAS F. WADDELL, M.D.,
Petitioners,

v.

UNITED STATES OLYMPIC COMMITTEE and INTERNATIONAL OLYMPIC COMMITTEE,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS

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QUESTIONS PRESENTED

1. Did Congress violate the Constitution when it authorized the United States Olympic Committee to sue to enjoin one who uses the designation "Olympic" to label and promote a new international athletic competition, and to market associated retail goods?

2. Should the provisions of the Amateur Sports Act of 1978 that protect against unauthorized use of the label "Olympic" for sales or for athletic contests be held to provide no more than ordinary trademark protection?

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On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS

STATEMENT

Respondent United States Olympic Committee (USOC), which through its predecessors dates back to 1896 and was federally chartered in 1950, is a private group that oversees participation by U.S. amateur athletes in the quadrennial international Olympic Games and the Pan American Games, and also coordinates the Olympic Games when they are held in the United States. J.A. 9-10, 32.[1] Respondent International Olympic Committee (IOC) is an international association which recognizes "National Olympic Committees" in more than 150 countries and

[1] Citations to "J.A." are to the joint appendix filed herein, which is bound in three volumes, to "P. Br." to the Brief for Petitioners, and to "P.C.A." to the opinions in the appendices to the Petition for certiorari. Petitioners' *amici* have filed two additional briefs with 117 pages of detailed argument on legal points barely touched on in petitioners' brief; respondents have attempted also to address those insofar as seemed necessary and space permitted. The brief of Mexican American Legal Defense Fund, *et al.*, is cited as "A. Br. I" and of the Amateur Athletic Union, *et al.*, as "A. Br. II."

which has conducted the modern Olympic Games every four years (except during the two World Wars) since 1896. J.A. 7.[2]

USOC and IOC brought this action in 1982 in the United States District Court for the Northern District of California under § 110 of the Amateur Sports Act of 1978, 92 Stat. 3045, 3048, 36 U.S.C. § 380, to enjoin petitioners, a California corporation and its president, J.A. 92, from using the designation "Olympic" to promote a nine-day international athletic competition in San Francisco with thousands of participants from 20 or more countries, and on merchandise petitioners were selling to raise money. Petitioners wanted to advertise and promote their international athletic games as the "Gay Olympic Games," which they announced would be "similar to the traditional Olympic Games." J.A. 406.

Calling themselves the "Olympic Committee," J.A. 353, 361, they explained that their planned first international "Gay Olympic Games" would be held in San Francisco in 1982. J.A. 402-03. The "Gay Olympic Games" were to begin with the arrival of a lighted torch carried by relays of 2000 runners across the continent from New York, J.A. 98, 432; 355, 357, with a ceremonial "Olympic" flame-lighting in 60,000-seat Kezar Stadium in San Francisco. J.A. 402, 419. This would be followed by a specially written anthem, J.A. 355, 357, and a parade with banners and uniformed groups of thousands of athletes, marching

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[2] The International Olympic Committee was formed in 1894, J.A. 6, by private citizens from nine countries who were supporters of amateur sports, called together by Baron Pierre de Coubertin. In 1896 the IOC held the first modern Olympic Games. The IOC, a Swiss corporation, selects its own members. See INTERNATIONAL OLYMPIC COMMITTEE, OLYMPIC CHARTER 1985, Rules 11, 12 (1985), p. 20a, *infra*. Rule 12 of the Rules of the IOC provides in part: "Members of the IOC are representatives of the IOC in their countries and not their delegates to the IOC. They may not accept from governments or from any organizations or individuals instructions which shall in any way bind them or interfere with the independence of their vote."

arranged by city, J.A. 357, 414, from more than 20 different countries, J.A. 354, 400, 402. Eighteen different categories of sports contests would be held, eleven of which are traditional contests of the modern Olympic Games. J.A. 354, 359, 407, 427; P.C.A. 109-10. Closing ceremonies and presentation of gold, silver and bronze medals, J.A. 355, 410, were, according to petitioner Waddell, also to be "similar to the traditional Olympic Games" and "designed to attract competitors from around the world." J.A. 406, 425. Petitioners advertised with a logo of three overlapping circles, instead of respondents' five interlocking rings. *E.g.*, J.A. 349, 357. Petitioners stressed that the "Gay Olympic Games" were open to all athletes without regard to sexual orientation, J.A. 93-94, 99, 352, 421-22, 460, P.C.A. 110 (as are the Olympic Games, J.A. 34, 186), and were intended to be "not so much a 'Gay' olympics as they were a 'People's' olympics." J.A. 222. They were designed to foster amateur athletic competition among people throughout the world, and also to improve the public perception of homosexuals. J.A. 98, 355. Petitioners stated that their Games were intended to be "within the format of Olympic style competition," J.A. 406, 352, and to "rival the traditional Olympic Games." J.A. 402.

In advertising and promoting the "Gay Olympic Games," petitioners solicited contributions and sold goods that included an "official Olympic T-shirt," buttons, bumper stickers, and other merchandise carrying the legend "Gay Olympic Games." J.A. 94, 107, 113-14, 167, 360, 362, 427. They also charged admission, J.A. 426, 428, and registration fees, J.A. 353, 408. They referred to their office as "Olympic Headquarters." J.A. 361. They engaged in local and national fundraising" J.A. 361, 400, 402, 404, and succeeded in obtaining hundreds of business and corporate contributions, J.A. 109, 113, 399, 428, including support from such companies as the Marriott Corporation, J.A. 114. They held fundraising benefits. J.A. 109, 417, 427. The planned "Gay Olympic Games" sought, J.A. 418, 425, 432, and received wide publicity in the press, locally, nationally, and

internationally, J.A. 107, 409, 413, 418, 421, 459, while for themselves "retain[ing] all visual and sound rights." J.A. 413.[3]

The executive director of USOC, on learning of petitioners' activity, did not object to petitioners' promoting a new international athletic competition consciously modeled on the modern Olympic Games. However, he informed petitioners that USOC objected to use of the term "Olympic" in naming and promoting the event, or to label associated merchandise. J.A. 33, 347-48. He informed petitioners that Congress had reserved for USOC the exclusive use of the label "Olympic" as applied to athletic events and for trade purposes. He added that § 110 applies "most particularly with respect to any athletic or purported athletic" events, J.A. 363, and that "[t]o allow your organization to make use of such terminology would dilute the meaning and significance of this event [the Olympic Games], and, I therefore cannot grant authorization for such usage." J.A. 364.

He further explained that "The position of the United States Olympic Committee with regard to the 'Gay Olympic Games' has nothing to do with the issue of homosexuality." J.A. 363; see also *id.*, 131. He pointed out that USOC "takes exception and opposes" such unauthorized uses of the "Olympic" designation, J.A. 364, and the record showed that USOC has consented to use of "Olympic" by only three athletic events: the Special Olympics for the disabled, and the developmental Junior and Explorer Olympics, all of them programs called for in USOC's charter (and, in fact, conducted by constituent members of USOC). J.A. 33, 181; P.C.A. 124 n.6; see Amateur Sports Act § 104, 36 U.S.C. § 374. For all others, it was uncontradicted that USOC "has not authorized and has, without exception, objected to any use of 'Olympic' as a trade name in connection with athletic competitions and events coming to USOC's attention or knowledge," J.A. 33, conducted by "any group," J.A. 34.

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[3] See also *Homosexual Athletic Meet To Open on Coast*, N.Y. Times, Aug. 22, 1982, § 1, p. 25, col. 1.

Initially petitioners, saying they "readily understood" USOC's position, J.A. 96, sent "best wishes," and informed USOC that "we have discontinued the use of the term 'Olympic' to describe our event." J.A. 365, 34. USOC's executive director replied, "I appreciate your response to my request and the position which you have taken, and I wish you well in your venture." J.A. 366. However, soon petitioners wrote again, this time asserting a right under the First Amendment to call their games and products by the name "Olympic." J.A. 367. After additional correspondence, J.A. 371, 373, 376, on learning that petitioners had resumed using the "Olympic" label, J.A. 31, 35, 427, 459, and were publicizing their noncompliance with USOC's request, J.A. 423, 427, 459-60, respondents brought this action pursuant to § 110 to enjoin petitioners from that use.[4] The District Court after hearing (per Conti, J.) granted a temporary restraining order, J.A. 39, and after another hearing (per Peckham, C.J.) a preliminary injunction. J.A. 163.

Petitioners stated that they "readily admit that they have used the combination of 'Gay Olympic Games' to promote, and to sell items . . . ." J.A. 67. Petitioners argued that "the nonprofit status of this defendant is at the crux of our position," J.A. 48, and is "the heart of the matter." J.A. 47. USOC submitted evidence that it derives the bulk of its funds from private donations and licensing of the "Olympic" name and emblem, with licenses raising $40 million in that four-year cycle. J.A. 32. Petitioners also asserted that they were being "selectively prosecuted." J.A. 99. Their stated basis for that belief was that "I know of no other organization, athletic or otherwise, using the term 'Olympic,' having been re-

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[4] The complaint alleged seven causes of action, of which the violation of the Amateur Sports Act was one. J.A. 5-15. Because summary judgment was granted on that count, the District Court never ruled on the other six counts, P.C.A. 116, which included trademark infringement, unfair competition, and violation of the California antidilution statute, CAL. BUS. & PROF. CODE § 14330. Although no occasion arose to rule upon those counts, they were never dropped from the case.

strained from such usage by the USOC." *Ibid.* USOC in reply submitted evidence of a number of court actions it had already brought to stop unauthorized use of the designation "Olympic," as well as several hundred letters sent out to violators requesting them to cease and desist. J.A. 57-58, 383, 388, 392, 395; *id.*, 143, 194, 435. Petitioners acknowledged that such letters had been sent "in many instances." J.A. 51.

The opinion by Chief Judge Peckham noted that the USOC has been a private organization since 1896, federally chartered in 1950. The court discussed the then recently-enacted Amateur Sports Act of 1978, which for the first time had authorized the USOC to bring civil suits to enjoin unauthorized uses of the term "Olympic," replacing criminal penalties previously in the law. P.C.A. 103-06. The court stressed and repeated that the Act "does not establish a *per se* rule against the unauthorized use of the word 'Olympic.' " P.C.A. 108. Rather, the court concluded, the Act granted protection for only a limited "range of uses," P.C.A. 108, 122—so that it was necessary to analyze on the facts of the case whether use of the label "Gay Olympic Games" for the contests and associated retail goods fell within that specified range. P.C.A. 108, 122. The court recognized that petitioners were not using the designation "Olympic" for parody or protest, but rather to label a serious new international athletic event. P.C.A. 109-13; see, *e.g.*, J.A. 421, 425.

> "Further, defendants' plans include Olympic ceremonial events, including the carrying of a torch, an opening parade, and closing ceremonies. Participants will represent their countries or cities and march behind the flags of these at the opening and closing ceremonies." P.C.A. 111-12.

The court found that the "Gay Olympic Games" "though sponsored by the gay community, are open to both homosexuals and heterosexuals," P.C.A. 110, were of "national and international scope," and were "modeled . . . closely in both events and ceremonies to the Olympic Games." P.C.A. 115.

The court also frankly recognized that:

> "Homosexuals have indeed been the victims of discrimination and bigotry in other contexts." P.C.A. 123.

It described petitioners' stated purpose of "creating a more realistic image of homosexual men and women" as a "laudable goal." P.C.A. 112.

The court also found, based on the record, that USOC had not discriminated against petitioners by bringing suit after informal requests had failed.[5] P.C.A. 123-25. The court noted the recency of the civil remedies, the large scale of petitioners' event, and that USOC had pursued and was pursuing other enforcement actions, including litigation, against other violators. P.C.A. 123-25; see J.A. 57-58, 383, 388, 392, 395. It found that "it is not true that USOC has not prosecuted other civil actions under section 380." P.C.A 124-25. The court also concluded that to apply the Amateur Sports Act's prohibition of use of the "Olympic" label in this context would not be unlawfully discriminatory, even if a constitutional equal-protection limitation applied directly to USOC, a proposition as to which the court had "serious doubts." P.C.A. 121.

Plaintiffs appealed the preliminary injunction to the United States Court of Appeals for the Ninth Circuit, which (per Circuit Judges Hug and Harris and District Judge Gadbois) affirmed. P.C.A. 81. The Court of Appeals, while holding that "There is no first amendment right to use the word 'Olympic' in the title of appellants' games," P.C.A. 85-86, emphasized also that "Appellants are not enjoined from making factually correct statements which mention the Olympic games."[6] It also af-

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[5] The record on summary judgment was the same in this respect, except for evidence of additional actions taken by USOC to prevent use of the "Olympic" label. J.A. 216-17, 437, 439, 443, 453; see also *id.* 462.

[6] The District Court had assumed that under § 110 USOC would have to prove a "tendency" to cause confusion, which was less demanding than the Lanham Act's standard of "likelihood," and

firmed the finding that petitioners had failed to show any discrimination in enforcement against them. P.C.A. 86.

Petitioners' 1982 event was held as planned, entitled the "Gay Games I." J.A. 472-73. Petitioners declared that it was "an astounding success," J.A. 474, with 1300 athletes from 12 countries participating. J.A. 475. An even larger "Gay Games II" was held for nine days in 1986, J.A. 477, with approximately 3,400 athletes participating from 17 countries, and the next quadrennial 1990 "Gay Games" are already scheduled for Vancouver, B.C.[7]

In 1984, upon completion of discovery, the District Court (per Vukasin, J.) granted summary judgment for respondents and entered a permanent injunction. J.A. 272; P.C.A. 77. That injunction, which followed closely the text of the statute, did not restrict any of petitioners' athletic activities. It was limited to enjoining petitioners not to use "Olympic" or any term or symbol tending to suggest a connection with the USOC,

> "for the purpose of trade, to induce the sale of any goods or services, or in connection with any advertising, promotion, publicity or production of any theatrical exhibition, athletic performance or competition . . . ." P.C.A. 78.[8]

Petitioners again appealed. A different panel of the Ninth Circuit (Circuit Judges Goodwin and Wallace and

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which the court after review of the planned uses found to be so apparent on the facts that it could be "presumed." P.C.A. 114-15. The Court of Appeals, after analyzing the text and legislative history of § 110, P.C.A. 87-90, concluded that with respect to use of the designation "Olympic," very likely no showing of a tendency to cause confusion was required by the statute. P.C.A. 90.

[7] Petitioners' 1982 budget was $400,000, J.A. 477; their budget ifor 1986 was "magnitudes larger." *Ibid.* See Bishop, *"Olympic" Games Seen as Balm for AIDS Fear*, N.Y. Times, Aug. 17, 1986, § 1, p. 31, col. 1; Los Angeles Times, Aug. 18, 1986, § 1, p. 2, col. 6. In promoting these ventures, petitioners raffled off tickets to respondents' Olympic Games. J.A. 477-78.

[8] The District Court also dismissed petitioners' counterclaims and denied petitioners' demand for USOC to pay them attorneys' fees. P.C.A. 79; J.A. 172.

Senior District Judge Stephens) again affirmed. The Court of Appeals reviewed the purpose of the Amateur Sports Act and explained that

> "It is uncontested that SFAA used 'Olympic' in the promotion of its games. This use involved not only the advertising of the games, but the selling of products with the word 'Olympic' on them." P.C.A. 4.

It held that when Congress in 1978 repealed the former criminal sanctions for use of "Olympic" in trade and for athletic contests, and substituted instead a civil cause of action, Congress meant, as it had in a 1950 criminal statute, to protect against unauthorized use of the "Olympic" designation for athletic or trade purposes, without confining the prohibition to cases of possible confusion. P.C.A. 5-7. Congress intended to protect the market value of licenses that USOC might grant for such use of the "Olympic" designation, and thereby safeguard USOC's ability to raise money. P.C.A. 6-8.

The Court of Appeals once more rejected petitioners' argument that the Act of Congress granting exclusive athletic and commercial use of the label "Olympic" to USOC was unconstitutional. The Court held that, as in actions for infringement of copyrights or trademarks, the statutory labeling protection did not violate the First Amendment, P.C.A. 11-13, and that calling on courts for enforcement against violations did not constitute objectionable governmental action. The Court of Appeals also examined the injunction, emphasizing that "review of a permanent injunction is stricter" than for preliminary relief. P.C.A. 14. It concluded that "providing injunctive relief was not, given SFAA's past use of the protected words and symbols, an abuse of discretion," and that the injunction "merely tracks the statute" and was not overbroad. P.C.A. 15.[9]

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[9] The Court of Appeals reversed the District Court's award of attorneys' fees to respondents, and remanded for further findings. Respondents did not cross-petition and have not sought review of that aspect of the case.

Petitioners then sought rehearing *en banc*, which was denied, with Judge Kozinski, joined by two other judges, dissenting. Although emphasizing that "I find it difficult to reach any but the most tentative conclusions," and "I do not necessarily conclude that the Amateur Act is irreconcilably at odds with the first amendment," P.C.A. 48, he expressed the "tentative" view that "By passing the Act, Congress extracted a word from the English language and gave it to a private party to use in connection with any commercial endeavor or public event." P.C.A. 31. As he characterized the case, "What appellants challenge is the power of Congress to privatize the word Olympic, rendering it unutterable by anyone else in connection with any product or public event, whether for profit or, as in this case, to promote a cause." P.C.A. 36. Judge Kozinski also contrasted USOC's policy of authorizing the Special, Junior, and Explorer Olympics, and criticized USOC's failure to bring litigation against organizers of the "Police Olympics." P.C.A. 40. He concluded that "Accepting SFAA's allegation, as we must, it seems that the USOC is using its control over the term Olympic to promote the very image of homosexuality that the SFAA seeks to combat." P.C.A. 40. This Court granted certiorari.

SUMMARY OF ARGUMENT

This case does not involve any interference with petitioners' unfettered right—now successfully exercised both in 1982 and again in 1986—to hold a serious week-long international athletic competition, with thousands of participants, tens of thousands more spectators, and international press and television coverage, consciously modeled on the modern Olympic Games. Nor does this case involve removing any word from the English language, if such a thing were possible. All that is at issue here is whether petitioners can identify and promote a new, large quadrennial international athletic event as the Gay "Olympic" Games, and whether they can raise money by

selling T-shirts, souvenirs, and a host of trade paraphernalia bearing the word "Olympic." The dispute is about use of a label, and whether petitioners have a constitutional privilege to appropriate it for their products and services.

Congress in 1950 prohibited new uses of the designation "Olympic" for trade and athletic contests except those licensed by the United States Olympic Committee. In the Amateur Sports Act of 1978, Congress hoped to encourage amateur sports and foster development of U.S. amateur athletes for international competition. But Congress left USOC with the task of raising privately the funds needed to achieve those objectives. Congress anticipated that, by licensing of "Olympic" and the five-ring symbol, USOC would be able to raise funds for its activities and for expenses of U.S. amateur athletes, and that by civil enforcement actions, if necessary, it could preserve its good will and the value of such licenses. "[I]f the USOC could not grant exclusive rights . . . the USOC would find itself unable to raise the funds required for participation in the Olympic Movement." *USOC* v. *Intelicense Corp.*, 737 F.2d 263, 266 n.3 (2d Cir.), *cert. denied*, 469 U.S. 982 (1984).

The Amateur Sports Act's provision for a civil cause of action covered the same unauthorized uses of the "Olympic" label that had been criminally prohibited in 1950: for sale of goods or services, or an athletic competition. Congress in this special statute plainly intended to define a particular limited category of misappropriation. It was not simply reiterating the Lanham Trademark Act's infringement protection, which is limited to proof of "likelihood of confusion." USOC already had such protection, having held a registered trademark and service mark on the word "Olympic" for many years.

A clearer violation of the statute than occured here is difficult to imagine. Yet petitioners assert first of all that, in spite of its history and of Congress' emphasis in

the 1978 statute that USOC's right to the designation "Olympic" should be "exclusive," nevertheless the 1978 Act should be read to confer no rights that USOC did not already have as a result of its existing trademark. That argument—that Congress really accomplished nothing in 1978—is refuted by text, history, and common sense.

More importantly, petitioners claim a privilege to ignore the Congressional mandate. They argue that the Act of Congress reserving exclusive use of the "Olympic" label for athletic contests and trade goods to USOC violated the First Amendment. They seek to conjure a vision of shadowy censors snipping words from dictionaries, or of reporters and commentators gagged so they may not utter an offending term. Such fancy has nothing to do with this case.

No case of this Court has ever hinted that Congress (or the states) may not protect against many forms of competitive practices, including misappropriation. See *International News Services* v. *Associated Press*, 248 U.S. 215 (1918). Also, this Court has held that they can regulate trade names. *Friedman* v. *Rogers*, 440 U.S. 1 (1979). Here, moreover, Congress has substantial and unusually explicit reasons of public policy for doing so: in order to assure that USOC, by funds raised from licenses and contributions based on respondents' good will, would be able to continue to develop amateur athletes and to finance the participation of teams from the United States in the Olympic Games. Prohibiting nothing more than the use of USOC's label "Olympic" for petitioners' products and paid sports event was a narrow and clearly focused regulation of commercial expression that fits easily within the criteria explained by this Court in *Central Hudson Gas & Elec. Corp.* v. *Public Service Comm'n*, 447 U.S. 557 (1980).

Seeking to avoid a test they cannot meet, petitioners ask this Court instead to treat their appropriation of USOC's "Olympic" label for their goods and athletic games as a speech activity to be judged by non-commer-

cial standards. Because petitioners admittedly were not seeking to comment on the Olympic Games as such, how they can by *fiat* make their paid-admission contests, fund-raising and sales activities non-commercial is unclear. But even by the non-commercial standard, the Amateur Sports Act's very limited restriction is well within what is permissible.

The Act is totally content-neutral. Petitioners remain free to say what they want and do what they want, as long as they do not misappropriate for their competition and products the "commercial magnetism" of the "Olympic" label. *Mishawaka Rubber & Woolen Mfg. Co.* v. *S.S. Kresge Co.*, 316 U.S. 203, 205 (1942). They have in fact availed themselves of that wide range of alternatives, and for nearly five years have promoted their Games and sales activities, without using "Olympic," with great success. The narrow labeling restriction here, placing no real burden on free expression, meets the standards of *United States* v. *O'Brien*, 391 U.S. 367 (1968), and is analytically correlative to the time, place and manner restrictions on showing of adult movies, on sound trucks, and such. *Cf. City of Renton* v. *Playtime Theatres, Inc.*, 106 S. Ct. 925 (1986); *Members of City Council* v. *Taxpayers for Vincent*, 466 U.S. 789 (1984).

The holding that petitioners seek would eradicate not just this statute—and with it the funding of the U.S. Olympic effort—but dozens of other Congressional enactments protecting other designations as well. It would also call into doubt many state laws prohibiting misappropriation of labels, trademarks, and other commercially valuable material, plus "antidilution" unfair-competition statutes enacted in nearly half the states, including the major trade centers of this country.

Petitioners' final argument is that they are the victims of unconstitutional "selective prosecution." But there are two insuperable obstacles to the ruling they seek. The first is, the record and findings below are wholly to the contrary: USOC since 1978 has proceeded time and again, both informally and by litigation, to pre-

vent unauthorized users of every description from misappropriating the "Olympic" label. Petitioners insist on believing that someone has it in for them. What they fail to recognize is that use of that label for their new international athletic event, with solicitations of contributions and associated sales of retail goods, was the most substantial violation of its kind on record.

Because the record shows no singling out of petitioners, it is not necessary to reach petitioners' argument that decisions by USOC to enforce its statutory rights are governmental action subject to attack on equal-protection grounds. The implications of that argument obviously would be revolutionary. There is no need or basis after nearly forty years to expand the unique ruling in *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), and to convert all private enforcement decisions into state action. And this Court's prior cases demonstrate that the fact that USOC's corporate charter is federal, that it has legal duties imposed upon it, and that what it does serves a good public interest, does not make USOC an arm of the state. *Rendell-Baker* v. *Kohn*, 457 U.S. 830 (1982); *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345 (1974).

ARGUMENT

I. CONGRESS WITH EXCELLENT AND ADEQUATE REASONS RESERVED TO USOC EXCLUSIVE RIGHTS TO THE TERM "OLYMPIC" FOR LABELING ATHLETIC CONTESTS AND TO INDUCE THE SALE OF GOODS OR SERVICES.

A. The Amateur Sports Act by Its Terms Grants USOC a Right to the Label "Olympic" for Sales and for Athletic Contests.

"Statutory construction must begin with the language employed by Congress . . . ." *Park 'N Fly, Inc.* v. *Dollar Park and Fly, Inc.*, 469 U.S. 189, 194 (1985); *accord*, *Bread Political Action Committee* v. *FEC*, 455 U.S. 577, 580 (1982). Section 110 of the Amateur Sports Act of 1978, 92 Stat. 3048, codified as 36 U.S.C. § 380, p. 1a, *infra*, is unusually clear. It provides for USOC to "authorize contributors and suppliers of goods" to use pro-

tected Olympic designations or symbols. § 110(b), 36 U.S.C. § 380(b). And it deals with the "Olympic" designation in two separate places. The statutory language first says:

> "(a) Without the consent of the Corporation [the USOC], any person who uses for the purposes of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition—
>
> * * * *
>
> "(4) the words 'Olympic', 'Olympiad', 'Citius Altius Fortius', or any combination or simulation thereof tending to cause confusion, to cause mistake, to deceive, or to falsely suggest a connection with the Corporation or any Olympic activity;
>
> shall be subject to suit in a civil action by the Corporation for the remedies provided in the Act of July 5, 1946 (60 Stat. 427; popularly known as the Trademark Act of 1946)."

Then separately, in a different clause, the statute reiterates:

> "(c) The Corporation shall have exclusive right to use . . . the words 'Olympic', 'Olympiad', 'Citius Altius Fortius' or any combination thereof subject to the preexisting rights referred to in subsection (a)." [10]

Petitioners urge that the statutory language and its "ordinary meaning" "*require* this Court to interpret Congress' intent as one bestowing nothing more than a trademark upon USOC." P. Br. 22 (emphasis supplied). That is nonsense.[11] Such a law would have served no purpose at

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[10] The "preexisting rights" are a "grandfather" clause that exempts from liability under § 110 "any person who actually used" protected designations including "Olympic" prior to the 1950 act, or used "simulations thereof tending to cause confusion" prior to the enactment of the 1978 Act.

[11] Even petitioners' *amici* do not go so far. Instead, *amici* argue simply that "the wording used by Congress is very complex and ambiguous." A. Br. II 24.

all. USOC had already for many years held a registered trademark and a registered service mark which had become incontestable on "Olympic." J.A. 378-82. It had all the rights of a trademark holder already available. Plainly the statute does more. It allocates to USOC in section (a) (4) an additional right to sue to enjoin "any person who uses" the designation "Olympic" "for purposes of trade, to induce the sale of any goods or services, or to promote any . . . athletic performance or competition." [12]

Petitioners also, by ignoring the usual rules of English punctuation, assert that the phrase in section (a) (4) "or any combination or simulation thereof tending to cause confusion" should be read so that the "tending to cause confusion" phrase would also modify the earlier word "Olympic," and thus place on USOC the burden of proving in every case a tendency toward confusion (meaning, as a practical matter, many more expensive trials). As a technical grammatical matter, that is erroneous, because if the statute had so provided, then a comma should have followed "thereof." More importantly, such a strained reading would not square with the separate reiteration in section (c) (which petitioners do not discuss) that USOC is to "have the exclusive right to use . . . the word 'Olympic' . . ." [13] The parts, and the totality, of the statutory language cannot fairly be read, as petitioners assert, "to require USOC to prove trademark infringement." P. Br. 20. Like the incontestability provisions of the Lanham Act, this "plain language" of the statute

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[12] The four subsections of § 110 protect, respectively, in § (a) (1) the Olympic five-ring symbol; in § (a) (2) the USOC Olympic emblem; in § (a) (3) against use of trademarks or trade names falsely representing association or endorsement by IOC or USOC; and in § (a) (4) "Olympic" and other designations. Although the courts below did not reach the point, the record establishes a violation of § (a) (3), as well as of § (a) (4)'s broader protection.

[13] Subsection (c), unlike subsection (a) (4), is confined to the original 1950 act's "Olympic" designations, omitting "simulation." Notably, in omitting that newly added term, it also omits the accompanying modifying phrase "tending to cause confusion."

"cannot be attributed to inadvertence by Congress." *Park 'N Fly, Inc. v. Dollar Park and Fly, Inc., supra*, 469 U.S. at 197.[14]

B. The Legislative History Confirms That Congress Did Not Limit Protection to Cases Involving Confusion.

If the statute were ambiguous, the next step would be to examine the legislative history, which petitioners cite only once in passing. P. Br. 20. They rely more on repeated assertions that Congress must have intended the kind of statute they advocate—one that would "require USOC to prove trademark infringement," P. Br. 16, 22, with its many limitations, defenses, and litigative pitfalls.[15] But any fair examination of the legislative history shows otherwise. Congress had every reason not to force USOC to a trial on the issue of potential confusion every time it sought to stop an unauthorized "Olympic" designation. Congress was concerned about the Olympic Games. It was not tinkering with a trademark statute.[16]

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[14] The very introduction of the word "tending" with respect to combinations or simulations shows that Congress was not following the Lanham Act, whose infringement standard is the different one of "likelihood" of confusion. See 15 U.S.C. § 1114.

[15] Petitioners recognize why they must take the position they do. They concede:

> "After all, *if as USOC contends, Congress' real purpose in enacting 380* [§ 110] *was to provide a 'new cause of action* [for] protection for Olympic-related designations apart from the protection provided by the Federal Trademark Act (footnote omitted),' *trademark infringement defenses then logically would not apply under section 380.*" P. Br. 25-26 (emphasis supplied).

[16] Congress when it wanted to incorporate Lanham Act defenses into new legislation has said so explicitly. See, *e.g., Trademark* Counterfeiting Act of 1984, § 1502(a), 98 Stat. 2178, 2179, 18 U.S.C. § 2320(c) ("All defenses, affirmative defenses, and limitations on remedies that would be applicable in an action under the Lanham Act shall be applicable in a prosecution under this section."). Congress also in many other provisions has explicitly distinguished § 110 of the Amateur Athletic Act from the Lanham Act. See, *e.g.*, 15 U.S.C. § 1116(d)(1)(A); contrast 15 U.S.C. § 1116(d)(1)(B)(i) with (ii); 15 U.S.C. § 1117(b); 18 U.S.C. § 2320(d)(1)(B).

The 1950 criminal statute had flatly prohibited

> "any person . . . other than [USOC] . . . for the purposes of trade, theatrical exhibition, athletic performance, and competition or as an advertisement to induce the sale of any article whatsoever or attendance at any theatrical exhibition, athletic performance, and competition or for any business or charitable purpose to use . . . *the words 'Olympic', 'Olympiad', or 'Citius Altius Fortius' or any combination of these words:* . . ." Act of Sept. 21, 1950, ch. 973, 64 Stat. 899, 900 (emphasis supplied), p. 3a, *infra*.

That criminal statute made no provision for trademark infringement defenses. Congress when it drafted § 110 had no intention of retreating from that prohibition.

USOC agrees with *amici* that the most "illuminating," A. Br. II 16, explanation of § 110(a)(4) is a letter from the Commissioner of Patents and Trademarks, responding to a request for "drafting assistance," that was cited in the committee report as the basis for the final wording of § 110. See H.R. Rep. No. 95-1627, 95th Cong., 2d Sess. 15, 36-39 (1978).

The letter begins by confirming that the 1950 act "prohibits unauthorized use of . . . the words 'Olympic,' 'Olympiad', or 'Citius Altius Fortius.'" It then explains that beyond those, § 110 of the new law "would *add* to the list of designations whose unauthorized use is prohibited . . .

> "(3) a combination, simulation, or confusingly similar derivation of the words 'Olympic', 'Olympiad', or 'Citius Altius Fortius' which would tend to cause confusion, mistake or deception, or which would falsely suggest a connection with the Corporation or any Olympic activity." *Id.* at 37 (emphasis supplied).

In other words, the provision regarding tendency to cause confusion clearly referred only to the *added* prohibition, and not to the preexisting prohibition of "Olympic" to which it was added.

If any doubt could remain, it is dispelled by the letter's further statement that

> "Section 110 carries forward some prohibitions from the existing statute enacted in 1950 and adds *some new prohibitions*, e.g. words described in section (a) (4) tending to cause confusion, to cause mistake, or to deceive with respect to the Corporation or any Olympic activity." *Id.* at 38 (emphasis supplied).

As the act accordingly was drafted and enacted, section 110(a) (4) provided a civil remedy for unauthorized use of

> "the words 'Olympic', 'Olympiad', 'Citius Altius Fortius', or any combination *or simulation thereof tending to cause confusion, to cause mistake, to deceive, or to falsely suggest a connection with the Corporation or any Olympic activity.*" (Emphasis supplied.)

There is simply no way fairly to read that legislative history—not to mention the ordinary rules of punctuation—and not conclude that the "tending to cause confusion" language relates only to the added "or simulation" clause of which it was a part.

But if any doubt still remained after that, there is still more explanation in the letter to end it. The Commissioner pointed out to the Committee that as drafted, with the 1950 criminal prohibition repealed, the bill contained a loophole that would allow persons to register "Olympic" trademarks with the Trademark Office, and force the Trademark Office to show likelihood of confusion or deception before it could deny registration. Emphasizing that under § 110 proof of "confusion" was *not* to be required, *id.* at 38, the Commissioner's letter concluded,

> "we propose that a new subsection (c) be inserted to read:
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> > "The Corporation shall have exclusive right to use the name 'United States Olympic Committee'; the symbol described in subsection (a) (1); and the emblem described in subsection (a) (2); and the words 'Olympic', 'Olympiad', 'Citius Altius Fortius' or any combination thereof subject to

> the pre-existing rights [grandfather clause] described in subsection (a)."

Congress did so.

Amici's other arguments are just as severely flawed. Forced to acknowledge that Congress evinced no intention in 1978 of cutting back the protection it had enacted in the criminal section of 1950, they assert that "By enacting the prior [1950] statute, Congress was concerned only with preventing false representations and fraud," citing a brief committee report. A. Br. II 10; see S. Rep. No. 2523, 81st Cong., 2d Sess. 2 (1950). What *amici* ignore is that section 9 of the 1950 act had *two different* sentences with *two separate* prohibitions. The first, indeed, dealt only with fraud. The second, however—the one relevant to this case—prohibited *any* unauthorized use of the Olympic name and symbols, "for the purpose of trade, theatrical exhibition, athletic performance, and competition or as an advertisement . . . ." *Id.*, § 9, 64 Stat. 901, *infra* p. 3a.

Their remaining argument is that the version of the Amateur Sports Act which passed the Senate spelled out a long list of remedies available to USOC, a list that duplicated the typical remedies for trademark infringement. In the House version this list was deleted and a brief phrase substituted that simply incorporated by reference all the remedies available to trademark owners under the Lanham Act. From this laudable simplification of drafting, *amici* ask this Court to infer a major—but nowhere mentioned—substantive change intended to turn the USOC section into just a repetition of the entire Lanham Act, incorporating all infringement defenses as well as remedies.[17] Obviously, the technical staff merely

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[17] Shorthand floor reference to USOC being empowered to sue civilly "pursuant to the Lanham Act," A. Br. II 22, cannot overcome the statutory language, especially as explained so thoroughly by the Commissioner of Patents and Trademarks, see pp. 18-19, *supra*. In context, the obvious reference was simply to the substitution of civil for criminal remedies. There remain, of course, all the

was avoiding a redundant listing of remedies by the common technique of incorporation by reference.[18]

C. Administrative Rulings and Court Decisions Have Uniformly Held That Protection for the "Olympic" Label Exceeds That for Trademark Infringement.

A number of court decisions have examined the text, purpose, and history of § 110. Every one of them has come to the same conclusion as the Court of Appeals twice did below. None has accepted petitioners' invitation to read the statute so as to leave it a purposeless redundancy. "The scope of protection afforded by . . . [§ 110] is broader than trademark protection, and is more akin to that of an antidilution statute." *United States Olympic Committee* v. *International Federation of Bodybuilders*, 219 U.S.P.Q. 353, 360 (D.D.C. 1982). "[T]o sus-

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usual equitable defenses; for example, the court below did not dismiss petitioners' defense of laches, but considered it fully. Whether a use is in trade or for sales can also be a defense; see *Stop the Olympic Prison* v. *USOC*, 489 F. Supp. 1112 (S.D.N.Y. 1980). So can the statute's "grandfather" clause.

[18] *Amici* argue also that the 1978 Act should be read as doing no more than reiterating ordinary trademark protection and "placing the Committee on an equal footing with other federally chartered organizations." A. Br. II 28. This proceeds from a false premise. Although some cases involving symbols of other organizations have found confusion, only one suggested they would be limited to such situations; that case involved no economic effect, and the statute and legislative history were different from here. *Girl Scouts* v. *Personality Posters Mfg. Co.*, 304 F. Supp. 1228, 1232 (S.D.N.Y. 1969); 36 U.S.C. § 36. Several cases have held, even without reliance on statutory exclusive rights, that the "scout" designation would be protected even without any showing with respect to possible confusion. See *Adolph Kastor & Bros.* v. *FTC*, 138 F.2d 824 (2d Cir. 1943) (L. Hand, J.); *Boy Scouts* v. *Winchester Repeating Arms Co.*, 5 T.M.R. 142 (1926); *cf.* also *Triangle Pubs., Inc.* v. *Rohrlich*, 167 F.2d 969 (2d Cir. 1948). Moreover, Congress in 1978 was changing the remedies for the flat prohibition on use of "Olympic," which had been in the law since 1950; its stated purpose of the 1978 act was to make USOC's protection greater and more effectively enforceable. See H.R. Rep. No. 95-1627, 95th Cong., 2d Sess. 6-17, 15 (1978).

tain an injunction under 36 U.S.C. § 380(4) as to the use of the word 'Olympic,' no showing of a tendency to cause confusion, mistake or deception is necessary; it is only the 'combination or simulation' which must have such a tendency." *International Sports Marketing, Inc.* v. *International Olympic Committee* (D.Vt. 1984) (Oakes, Cir. J.), p. 11a, *infra.*

As the Second Circuit held in *USOC* v. *Intelicense Corp.*, 737 F.2d 263, 267 (2d Cir.), *cert. denied*, 469 U.S. 982 (1984):

> "Intelicense urges, absent an iota of support in the statute or case law, that we incorporate the more restrictive 'likelihood of confusion' standard into the provisions of § 380 [§ 110]. The upshot of this claim would be to supplant the 'use without the USOC's consent' standard expressly set forth in § 380, and dramatically constrain the effective scope of the statute, as well as to frustrate the Act's unequivocal purpose. *We are in agreement with the cogent analysis* provided by one court [the District Court in the present case, P.C.A. 91-127], which stated that *'Congress must have meant to place less of a burden on a plaintiff under a section 380 cause of action* than that placed upon a plaintiff suing under the Trademark Act alone.'" 737 F.2d at 267 (emphasis supplied).

Petitioners' brief does not cite the *Intelicense* case.

This unvarying line of judicial decisions is completely consistent with the interpretation of § 110 by the cognizant expert administrative tribunal, the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office, the same agency Congress consulted in drafting the statute. See pp. 18-20, *supra.* In *United States Olympic Committee* v. *Wilson Distributing Co.*, Opp. No. 70,684, (Pat. T.M. Off. T.T.A.B. 1986), p. 7a, *infra*, the Board held that "while 'likelihood of confusion' is the standard to be applied in oppositions based upon Section 2(d) of the Trademark Act of 1946, . . . no such standard is laid down in 36 U.S.C. § 380(c) . . .," and that USOC's "exclusive right to use 'Olympic' is unconditional." It also ruled, agreeing with all the courts below, that

"Lanham Act defenses are not available to a defendant in a proceeding based upon the Amateur Sports Act."

II. CONGRESS DID NOT VIOLATE THE CONSTITUTION IN RESERVING THE "OLYMPIC" LABEL FOR SALES AND FOR ATHLETIC CONTESTS TO USOC.

Petitioners adopt the broad proposition of the opinion dissenting from denial of rehearing below that by reserving specified uses of the label "Olympic" to USOC, Congress violated the First Amendment or other constitutional provisions. But by every known test, and certainly on the facts of this case, the text, purpose and values of the Constitution, including the First Amendment, have been respected.

A. Protecting USOC's Use of the "Olympic" Label To Raise Funds Was Clearly a Valid Objective Within Congress' Legislative Power.

There can be no question of Congress' power under the Commerce Clause to enact the Amateur Sports Act, nor of its good reasons for doing so. A Presidential Commission had concluded that "In international sport . . . American performances are deteriorating."[19] Congress sought in 1978, as it had in 1950, to help the situation.[20]

In § 110(b) of the Amateur Sports Act, Congress gave an affirmative grant of marketing rights to USOC, and in § 110(c) protection against competing trademark registrations. Those rights are valuable and are USOC's principal source of financial support. J.A. 34, 32.[21] And

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[19] FINAL REPORT OF THE PRESIDENT'S COMMISSION ON OLYMPIC SPORTS 1975-1977 1 (1977). Noting "poor organization and funding," it favored "a body having limited powers, leaving local matters to local knowledge, and deriving its authority from the consent of the governed." *Id.* at 11, 13.

[20] In 1950 Congress had noted that "without the [USOC], the United States would be unable to participate in the Olympic Games." S.Rep. No. 2523, 81st Cong., 2d Sess. 1 (1950).

[21] See *USOC* v. *Millsport, Inc.*, No. 83-278 (D. Vt. 1983), *aff'd sub nom. USOC* v. *Intelicense Corp.*, 737 F.2d 263 (2d Cir.), *cert. denied*, 469 U.S. 982 (1984), p. 32a, *infra*.

recognizing that criminal remedies had proved impractical, Congress in 1978 also substituted an independent civil action to prevent the appropriation of specified Olympic designations, confined to a narrow range of uses: inducing the sale of goods or services, or promoting any theatrical exhibition, athletic performance or competition. This range of protected uses bears a direct and rational relationship to the purposes for which the USOC was chartered, and to its need to secure and protect its sources of funding.

> "The fundamental purpose of that Act was to safeguard the USOC's ability to raise the financial resources that are a critical component of America's capacity to send world-class amateur athletes into international competition without the massive government subsidies enjoyed by competitors from other nations.
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> "It is clear that the Congressional intent in enacting § 380 [§ 110] was to promote the United States Olympic effort by entrusting the USOC with unfettered control over the commercial use of Olympic-related designations." *USOC* v. *Interlicense Corp.*, *supra*, 737 F.2d at 264, 266.

Petitioners argue that Congress has no power to protect trade designations other than by allowing traditional trademark infringement actions, based on likelihood of confusion, mistake or deception, and limited by all statutory defenses contained in the Lanham Act. The dissent from denial of rehearing below even assumed that § 110 "stakes out an intellectual property fiefdom quite unlike any thing we have seen in our law before." P.C.A. 39. That is simply incorrect. The law abounds with examples of trade protections that go beyond trademark infringement. Even the Lanham Act itself is not confined to trademark infringement, and in § 43(a), 15 U.S.C. § 1125(a), prohibits a "broader range of practices . . . as may the state unfair competition law." *Inwood Labs. Inc.* v. *Ives Labs. Inc.*, 456 U.S. 844, 858 (1982).

This Court has long recognized that even in the absence of a statute, and without any showing of confusion, a remedy may be provided for the misappropriation of one's commercially valuable property by another. *International News Service* v. *Associated Press*, 248 U.S. 215 (1918);[22] *Zacchini* v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977). It has long been recognized also that Congress can by statute prospectively reserve a trademark or trade name to a particular user, even if the term had long been in use by others. In the words of Judge Learned Hand, "the question of policy was for it [Congress] and it alone, and it is now finally closed." *Loonen* v. *Deitsch*, 189 Fed. 487, 492 (S.D.N.Y. 1911) (red cross). In *FTC* v. *A.P.W. Paper Co.*, 328 U.S. 193 (1946), this Court expressed no doubts whatsoever about the validity of the "Red Cross" statute,[23] stating that Congress was concerned both with protecting the public and "with protecting the Red Cross from pretenders." *Id.* at 201. This was in spite of arguments, almost identical to those made by petitioners here, that the words "red cross" "were in common usage in the English language for at least four hundred years

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[22] Even the separately writing Justices in the famous *INS* case, who objected to recognizing a misappropriation action at common law, emphasized that the legislature if it chose could create such a property right. See 248 U.S. at 248 (Holmes, J., concurring); *id.* at 266 (Brandeis, J., dissenting). "The law of trade-marks is but a part of the broader law of unfair competition . . . ." *United Drug Co.* v. *Rectanus Co.*, 248 U.S. 90, 97 (1918).

[23] The statute considered there was strikingly similar to both § 110 and its 1950 predecessor:

> "it shall be unlawful for any person, corporation, or association other than the American National Red Cross . . . for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States of America . . . the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof or of the words 'Red Cross' or 'Geneva Cross' or any combination of these words." Act of Jan. 5, 1905, § 4, 33 Stat. 599, 600, as amended, 36 Stat. 604 (1910).

prior to 1864," and that "[t]he use of a red cross as a trade-mark on medical products was quite natural." Brief Amicus Curiae of Johnson & Johnson, No. 320, OT 1945, 10, 14.[24]

Petitioners' assertion that "generic words cannot be trademarks," P. Br. 32, is inapposite on the facts of this case, and incorrect if intended as a statement of Congress' constitutional power. "Olympic" in 1978 had long been a registered mark. J.A. 31, 378-82. Moreover, "generic" or "descriptive" are simply concepts of traditional trademark law that in a context like the present one Congress is free to follow or not.[25] In granting protections to trade designations, Congress exercises wide choice under its commerce power. See *Park 'N Fly, Inc.* v. *Dollar Park and Fly, Inc.*, *supra*, 469 U.S. at 197-202.[26]

Similarly, the Commerce Clause does not require originality or first use. Even if it did, IOC and USOC are in fact creators—creators of the modern Olympic Games with their accompanying format, ceremonies and rituals, see pp. 24a-31a, *infra*, and it is their Twentieth-Century product that Congress meant to encourage. It was the modern Olympic Games, and not some tale from ancient times, that petitioners consciously copied. It was the modern "Olympic" designation that Congress could pro-

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[24] See also *Girl Scouts* v. *Hollingsworth*, 188 F. Supp. 707, 711 (E.D.N.Y. 1960) (rejecting argument that "a restriction on the use of the word 'Scout' is a breach of the freedom of the press and of expression and of the free usage of the English language.").

[25] *Canal Co.* v. *Clark*, 13 Wall. 311 (1872), dealt with common-law trademarks, not Congressional power.

[26] Even the dissent in *Park 'N Fly* recognized that such words may be used "unless Congress instructs otherwise." 469 U.S. at 215 (dissenting opinion). *Anti-Monopoly, Inc.* v. *General Mills Fun Group, Inc.*, 684 F.2d 1316 (9th Cir. 1982), *cert. denied*, 459 U.S. 1227 (1983), relied on at P. Br. 32, did not assert any constitutionally-based principle. In fact, it was severely criticized and overruled by Congress. Trademark Clarification Act of 1984, §§ 102, 103, 98 Stat. 3335; see S. Rep. 98-627, 98th Cong., 2d Sess. (1984).

tect, just as it did the "red cross" name and label in spite of ancient antecedents. *FTC* v. *A.P.W. Paper Co., supra.*

More than possible confusion as to sponsorship—obvious as that risk was here—was at stake. Congress had ample basis to conclude that uncontrolled commercial exploitation of "Olympic" could damage its objectives in at least three respects:[27] through uncontrolled proliferation and "market clutter,"[28] it would (1) deprive USOC of the ability to raise funds to finance participation in the Olympics pursuant to § 105(a)(3), 36 U.S.C. § 375(a)(3); (2) interfere with the ability to protect good will and the value of licenses by controlling the manner in which they are used and the nature and quality of products and services marketed with Olympic designations;[29] and (3) impede exclusive corporate sponsorship arrangements, because of direct conflicts or diminished attractiveness of Olympic-related designations. What is available free, no one will pay for.

Certainly it was not unreasonable for Congress also to conclude that the "Olympic" label should be protected without placing on USOC the burden of litigating the Lanham Act issue of "likelihood of confusion" every time a new violation occurred. Petitioners disagree with that policy, and complain that Congress to help amateur sports gave USOC "an unjustified advantage," P. Br. 27, one that respondents "do not deserve." A. Br. II 6. "At bottom, . . . [petitioners' brief] simply disagrees with the balance struck by Congress." *Park 'N Fly, Inc.* v. *Dollar Park and Fly, Inc., supra,* 469 U.S. at 202.

Congress wanted to be sure that USOC would be able to continue to raise enough private funds to continue to finance U.S. amateur athletes' participation in the Olym-

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[27] See *USOC* v. *Millsport, Inc., supra* n. 21, p. 34a, *infra.*

[28] See, *e.g.*, Brown, *Advertising and the Public Interest: Legal Protection of Trade Symbols,* 57 Yale L.J. 1165, 1191-94, 1199-1201 (1948).

[29] *E.g.*, petitioners allowed "Gay Olympic Games" to be used in liquor advertising, J.A. 399, contrary to IOC rules. P. 24a, *infra.*

pic Games. And the last thing Congress wanted was for the limited resources of USOC to be dissipated on repetitious extended litigation over issues like possible confusion.[30]

B. A Statute Providing Legal Protection for Use of a Designation To Sell Goods or Services, or for an Athletic Contest, Does Not Violate the First Amendment.

1. *The Statute Is a Limited and Valid Regulation of Commercial Speech.*

The use of "Olympic" involved here is commercial speech.[31] The injunction applies, as does the statute, to using that designation for sales of goods and services or to label athletic contests—the very uses that threaten USOC's fund-raising ability.

Commercial speech, this Court has made plain, is entitled to some constitutional protection, but only some. *Virginia State Board* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 770 (1976). A regulation of commercial speech is valid if it meets the four criteria set forth in *Central Hudson Gas & Elec. Corp.* v. *Public Service Comm'n*, 447 U.S. 557 (1980), and reiterated most recently in *Posadas de Puerto Rico Associates* v. *Tourism Co.*, 106 S. Ct. 2968 (1986). (1) First, in order for the First Amendment to apply at all, the speech must concern a lawful activity and not be misleading or fraudulent. Although the issue was not addressed below, petitioners' use of the word "Olympic" here could have been held misleading as a matter of law, implying a nonexistent affiliation with the Olympic Games. *Cf.* § 110(a)(3); *Adolph Kastor & Bros.* v. *FTC*, 138 F.2d 824 (2d Cir.

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[30] Because § 110 provides for the remedies of the Lanham Act, attorneys' fees "may" be awarded to USOC. 15 U.S.C. § 1117. However, recovery of such expenditures is by no means certain, as is evidenced by the Court of Appeals' reversal of the attorneys' fees award in this case. See P.C.A. 22.

[31] See Denicola, *Trademarks as Speech: Constitutional Implications of the Emerging Rationales for the Protection of Trade Symbols*, 1982 WIS. L. REV. 158, 193.

1943). The potential for such deception is sufficient basis for regulation. *Friedman* v. *Rogers*, 440 U.S. 1 (1979).[32]

Moreover, petitioners have failed to satisfy the other criteria of *Central Hudson Gas*. (2) The governmental interest in regulating must be substantial. Here it undoubtedly is. The Olympic Games are of great public interest worldwide, and Congress could and did rationally decide that they in some way can affect the perception of the United States abroad. The legislative history of the Amateur Sports Act of 1978 reiterates repeatedly the Congressional interest in encouraging U.S. amateur athletes to aspire to such competition. (3) The regulation must directly advance that governmental interest. The regulation here, and the injunction, are carefully tailored to Congress' clearly stated purpose of assuring the fund-raising capability of USOC, by allowing it the exclusive use of "Olympic" to label licensed trade items and athletic contests, to reserve the trade value of "Olympic" to USOC. (4) Finally, the regulation must be no more extensive than necessary to serve that interest. Here it is narrow, indeed. Petitioners are not restricted in any way in what they do or in what views they express. All that they are limited from doing is appropriating for sale of goods and services and for their international athletic contest the label "Olympic."[33]

Nowhere to be found in petitioners' brief is *Friedman* v. *Rogers*, *supra*. There this Court held that trade names

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[32] Petitioners' assertion that they never used "Olympic" without "Gay," P. Br. 6, does not alter the violation, and moreover is abundantly contradicted by the record. *E.g.*, J.A. 353, 361 ("Olympic Committee"); 359 ("Olympic emblem"); 358 ("The Olympic Office"); 360, 362 ("Olympic poster" and "Olympic T-shirt"); 361 ("Olympic Headquarters" and "Olympic Flag Corps"); 402 ("Olympic flame"); 403 ("Olympic medal"); 404 ("OLYMPICS '82"); 416 ("OFFICIAL OLYMPICS ENTERTAINMENT"). Petitioners also sought to register for themselves the corporate name "Golden Gate Olympic Association." J.A. 95, 349.

[33] This Congressionally planned and explicitly limited labeling restriction is a far cry from the casually adopted ordinance in *Linmark Associates, Inc.* v. *Township of Willingboro*, 431 U.S. 85 (1977), which cut off the dissemination of information.

are commercial speech, and their use can be prohibited even without a showing of deception, without violating the First Amendment. Moreover, petitioners' argument, which they described as "the heart of the matter," J.A. 47, that because they (like USOC) are a non-profit organization, they are somehow automatically exempt from trade regulations was long ago rejected. *American Medical Ass'n* v. *United States*, 130 F.2d 233, 237 (D.C. Cir. 1942, *aff'd*, 317 U.S. 519, 528 (1943). "Recruitment and selling are commercial activities, even when conducted for training rather than for profit." *Roberts* v. *United States Jaycees*, 468 U.S. 609, 640 (O'Connor, J., concurring).[34]

2. *Even if the Standards for Non-Commercial Speech Were Applied, the Statute's Labeling Restriction Met Constitutional Standards.*

No doubt recognizing that under the commercial speech decisions of this Court the rulings of all the courts below were clearly proper, petitioners urge—by means of repeated assertions—that their use of the "Olympic" label to promote their games and associated wares should be tested instead by the standard the First Amendment applies to purely expressive communications. But even that non-commercial First Amendment standard is not violated by the Act of Congress here.

Petitioners seek simply by invoking the First Amendment to override the legal consequences that follow when they "readily admit that they have used the combination of 'Gay Olympic Games' to promote, and to sell items . . .," J.A. 67, in violation of a limited regulation enacted for ample reasons of public policy. They have no such right. Legally protected property does not become free to the public merely because someone wishes to use it and

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[34] Even as to particular uses under the Copyright Act, "The crux of the profit/nonprofit distinction is not whether the sole motive of the use is monetary gain but whether the user stands to profit from exploitation of the copyrighted material without paying the customary price." *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U.S. 539, 562 (1985).

invokes the First Amendment. *Hudgens* v. *NLRB*, 424 U.S. 507 (1976); *Lloyd Corp.* v. *Tanner*, 407 U.S. 551 (1972); see also, *e.g.*, *Zacchini* v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977); *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U.S. 539, 555-60 (1985); *Prince* v. *Massachusetts*, 321 U.S. 158 (1944) (First Amendment does not prevent application of neutral prohibition to child distributing religious literature); *FTC* v. *Standard Educ. Society*, 302 U.S. 112 (1937).

Section 110 does not prevent anyone from discussing, approving or opposing the Olympic Games.[35] It simply restricts a limited form of use of the word "Olympic" as a designation or label. It is, from the viewpoint of First Amendment concerns, "content-neutral." *Members of City Council* v. *Taxpayers for Vincent*, 466 U.S. 789 (1984). Hence *Police Dept.* v. *Mosley*, 408 U.S. 92 (1972), which invalidated an ordinance permitting picketing on some subjects but not others, is not pertinent here. "The State may . . . enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry Educ. Ass'n* v. *Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983); see also *Regan* v. *Time, Inc.*, 468 U.S. 641, 648 (1984); *City of Renton* v. *Playtime Theatres, Inc.*, 106 S. Ct. 925 (1986); *Grayned* v. *City of Rockford*, 408 U.S. 104 (1972). As this Court expressed the rule in *United States* v. *O'Brien*, 391 U.S. 367, 377 (1968),

> "Whatever imprecision inheres in these terms, we think it is clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the govern-

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[35] Contrary to P. Br. 22 n.2, USOC from the beginning of this litigation clearly disavowed any suggestion that the statute could be used to restrict news reporting on the Olympic Games. J.A. 20, 53, 189.

> mental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

All those requirements are amply met here.

The statute here is perhaps most significant not for what it does, but for what it does not do. Petitioners remain free:

—To comment on the Olympic Games;

—To criticize the Olympics;

—To say that their Games are just as good as the Olympics;

—To say whatever they choose about society's attitudes towards homosexuality.[36]

In addition, they are not restricted:

—From holding quadrennial international athletic contests;

—From inviting thousands of athletes from many countries;

—From awarding medals and staging ceremonies and parades;

—From publicizing their event throughout the world;

—From raising funds.

All that they may not do is carry on these activities under the "Olympic" label. The injunction has not prevented the highly successful, J.A. 473-74, 477, 1982 Gay Games I from being repeated in 1986 on an even larger scale, with 3,400 participants from 17 countries. See p. 8, n.7, *supra*.[37]

"[T]he First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron* v. *Inter-*

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[36] *Cf. Dallas Cowboys Cheerleaders, Inc.* v. *Pussycat Cinema, Ltd.*, 604 F.2d 200, 204 (2d Cir. 1979): "There are numerous ways in which defendants may comment on 'sexuality in athletics' without infringing plaintiff's trademark."

[37] The recent "Goodwill Games" likewise were held without use of "Olympic."

national Society for Krishna Consciousness, Inc., 452 U.S. 640, 647 (1981). "For the right to communicate is not limitless," *Carey* v. *Brown*, 447 U.S. 455, 470 (1980), and even "[t]he right to associate for expressive purposes is not absolute." *Roberts* v. *United States Jaycees*, *supra*, 468 U.S. at 623. And those who wish to express views are not privileged thereby to violate otherwise applicable content-neutral regulations. *Clark* v. *Community for Creative Non-Violence*, 468 U.S. 288 (1984); *Cox* v. *New Hampshire*, 312 U.S. 569, 578 (1941). The statute most certainly does not prohibit all use of the word "Olympic" in every context, as the dissenting judge in the Court of Appeals appeared to worry it would. That clearly is not its consequence here. It is tailored to serve an important non-speech-related purpose, one far more clearly delineated than is usual. It "abridges no more speech or associational freedom than is necessary to accomplish that purpose." *Roberts* v. *United States Jaycees*, *supra*, 468 U.S. at 629. And "[t]he alternative means of communication left open are almost limitless." *Regan* v. *Time, Inc.*, *supra*, 468 U.S. at 659 n.13 (White, J.); see also *id.* at 704 (Stevens, J.).

No doubt the statute did not authorize protection used simply to silence criticism or discussion of the owner's activities or activities associated with it—to block, with no reasonable alternatives, communication of the speaker's message.[38] But that was not the case here. The

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[38] The dispositive issue in *Stop the Olympic Prison* v. *United States Olympic Committee*, 489 F. Supp. 1112 (S.D.N.Y. 1980), where the Olympic rings were used on a poster objecting to conversion of Olympic housing at Lake Placid, N.Y., into a prison, was whether the posters were substantially sold in trade. The district court found they were not. See *id.* at 1121. (Contrary to petitioners' statement, Petition for Certiorari 11, USOC was a defendant, not plaintiff, in *Stop*.) As the District Court here contrasted, "S.T.O.P. was not seeking to promote any theatrical exhibition, athletic performance, or competition by its use of the word 'Olympic' and the Olympic symbols in its poster." P.S.A. 109. Even parody cannot appropriate the substance of what is protected. See, *e.g.*, *Dallas*

present case is a far cry from those in which the contemplated use of a statutorily protected name or emblem or trademark or copyright is essential to communicate a message about it. *Cf., e.g., Schacht* v. *United States*, 398 U.S. 58 (1970) (construing 18 U.S.C. § 702 in conjunction with 10 U.S.C. § 772(f) to permit use of army uniform in theatrical production). Petitioners did not seek to discuss the Olympic Games. They did not seek to criticize the Olympic Games. What they sought to do was promote their own product, using the goodwill associated with USOC's protected name. Appropriating "Olympic" as their label was not essential to communication on any public issue.[39] Petitioners had no more First Amendment right to market the "Gay Olympics" than they would "Gay Coca-Cola," or "Gay Kodak" cameras, or "Gay Ivory Soap," or to solicit funds for the "Gay Red Cross."[40]

Cowboys Cheerleaders, Inc. v. *Pussycat Cinema, Ltd.*, 604 F.2d 200, 205 (2d Cir. 1979); *Walt Disney Productions* v. *Air Pirates*, 581 F.2d 751 (9th Cir. 1978), *cert. denied*, 439 U.S. 1132 (1979).

[39] Even if the technical Lanham Act defense of "fair use in description" had been included in § 110, it could not be satified here, because petitioners sought to use "Olympic" as the identification of their own product; the defense "is not available if the alleged descriptive use is in fact a trademark use." *Beer Nuts, Inc.* v. *Clover Club Foods Co.*, 711 F.2d 934, 937 (10th Cir. 1983); Denicola, *supra* n.31, at 193.

[40] This case is unlike *Cohen* v. *California*, 403 U.S. 15 (1977), in which comment on a public issue was held constitutionally protected even though the state judged the word used "offensive," at least "absent a more particularized and compelling reason," 403 U.S. at 26. Contrary to the dissenting judge's concern, P.C.A. 34, if petitioners had merely said, "f - - - the Olympics," the statute would not have been violated and this case would not have arisen. See also *Spence* v. *Washington*, 418 U.S. 405 (1974), holding that flag desecration could not prohibited for "offensiveness," particularly because the statute there had "nearly limitless sweep." 418 U.S. at 414 n.9.

Petitioners can make no overbreadth challenge to the statute, confined as it is to specified limited uses and, in the context of an international athletic competition and associated trade goods, "unquestionably applicable" to them. *Young* v. *American Mini Thea-*

3. *Petitioners' Proposed New Constitutional Rule Would Invalidate Long Accepted Federal and State Laws.*

The constitutional rule that petitioners seek here would not only result in declaring this Act of Congress unconstitutional. It would apparently invalidate dozens of similar federal statutes that with civil or criminal sanctions prohibit the unauthorized use of particular names and trade symbols.[41] And it apparently would invalidate a

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tres, Inc., 427 U.S. 50, 59 (1976); *accord, e.g., Roberts* v. *United States Jaycees, supra*, 468 U.S. at 630-31; *Parker* v. *Levy*, 417 U.S. 733, 760 (1974). As for petitioners' apparent claim that USOC has some burden of proving damage to itself, P. Br. 35, that as this Court has recognized is not the victim's burden even in a trademark infringement case. "Congress did not put upon the despoiled the burden—as often as not impossible to sustain—of showing that but for the defendant's unlawful use of the mark, particular customers would have purchased the plaintiff's goods." *Mishawaka Rubber & Woolen Mfg. Co.* v. *S.S. Kresge Co.*, 316 U.S. 203, 206 (1942).

[41] See 36 U.S.C. § 18c (Daughters of the American Revolution); 36 U.S.C. § 27 (Boy Scouts); 36 U.S.C. § 36 (Girl Scouts); 36 U.S.C. § 48 (American Legion); 36 U.S.C. § 56f (United Spanish War Veterans); 36 U.S.C. § 67p (AMVETS); 36 U.S.C. § 78o (Ladies of the Grand Army of the Republic); 36 U.S.C. § 87 (U.S. Blind Veterans); 36 U.S.C. § 90h (Disabled American Veterans); 36 U.S.C. § 100 (American War Mothers); 36 U.S.C. § 117 (Veterans of Foreign Wars); 36 U.S.C. § 206 (Civil Air Patrol); 36 U.S.C. § 236 (Reserve Officers Association); 36 U.S.C. § 286 (Future Farmers of America); 36 U.S.C. § 316 (Military Chaplains Association); 36 U.S.C. § 418 (Conference of State Societies); 36 U.S.C. § 446 (National Conference on Citizenship); 36 U.S.C. § 477 (National Safety Council); 36 U.S.C. § 516 (Board for Fundamental Education); 36 U.S.C. § 547 (Sons of Union Veterans); 36 U.S.C. § 587 (Foundation of Federal Bar Association); 36 U.S.C. § 777 (Veterans of World War I); 36 U.S.C. § 867 (Blinded Veterans Association); 36 U.S.C. § 895 (Big Brothers-Big Sisters); 36 U.S.C. § 1017 (National Women's Relief Corps); 36 U.S.C. § 1086 (Little League Baseball); 36 U.S.C. § 1160 (Paralyzed Veterans of America); 36 U.S.C. § 1215 (U.S. Capitol Historical Society); 36 U.S.C. § 1307 (United Service Organizations); 36 U.S.C. § 2115 (American Ex-Prisoners of War); 36 U.S.C. § 2909 (Daughters of the American Colonists); 36 U.S.C. § 3015 (369th Veterans' Association); 36 U.S.C. § 3305 (American National Theater and

host of state unfair-competition statutes and common-law doctrines as well.

Among commercial trade rights under the broad rubric of unfair competition are causes of action which have been created by courts or legislatures labeled misappropriation,[42] right of publicity,[43] and protection against dilution.[44] None of these torts requires any confusion as to source. Some are set forth in terms that strikingly resemble § 110. *E.g.*, N.Y. GEN. BUS. L. § 397, p. 14a, *infra*. Further, at least 23 state legislatures,[45] including most of the commercial centers, have enacted antidilution laws to protect against "diminution of plaintiff's name as an advertising tool," [46] to prevent "a gradual whittling

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Academy); 36 U.S.C. § 3416 (American Symphony Orchestra League); 36 U.S.C. § 3615 (Pearl Harbor Survivors Association). See also 18 U.S.C. § 705 (badges or medals of veterans' organizations); 18 U.S.C. § 706 (Red Cross); 18 U.S.C. § 707 (4-H Club); 18 U.S.C. § 708 (Swiss coat of arms); 18 U.S.C. § 709 (federal agencies); 18 U.S.C. § 711 ("Smokey Bear"); 18 U.S.C. § 711a ("Woodsy Owl"); 18 U.S.C. § 715 ("Golden Eagle Insignia").

[42] *International News Service* v. *Associated Press*, 248 U.S. 215 (1918).

[43] *Zacchini* v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977).

[44] *E.g.*, *Community Federal Savings & Loan Association* v. *Orondorff*, 678 F.2d 1034 (11th Cir. 1982). See generally Note, *Developments in the Law—Competitive Torts*, 77 HARV. L. REV. 888 (1964).

[45] See ALA. CODE § 8-12-17; ARK. STAT. ANN. § 70-550; CAL. BUS. & PROF. CODE § 14330; CONN. GEN. STAT. § 35-11i(c); DEL. CODE § 6-3313; FLA. STAT. § 495-151; GA. CODE ANN. § 10-1-451; IDAHO CODE § 48-512; ILL. REV. STAT. ch. 140, § 22; IOWA CODE § 548.11; LA. REV. STAT. ANN. § 51.223.1; ME. REV. STAT., tit. 10, § 1530; MASS. GEN. L. ch. 110B, § 12; MO. REV. STAT. § 417.061; MONT. CODE ANN. § 30-13-334; NEB. REV. STAT. § 87-122; N.H. REV. STAT. ANN. § 350-A:12; N.M. STAT. ANN. § 57-3-10; N.Y. GEN. BUS. L. § 368-d; OR. REV. STAT. § 647.107; 54 PA. CONS. STAT. § 1124; R.I. GEN. LAWS § 6-2-12; TENN. CODE ANN. § 47-25-512.

[46] *Wedgwood Homes, Inc.* v. *Lund*, 294 Ore. 493, 659 P.2d 377 (1983); see also *Dreyfus Fund, Inc.* v. *Royal Bank of Canada*, 525 F. Supp. 1108 (S.D.N.Y. 1981).

away"[47] of its "unique character,"[48] and to protect the selling power of a name with favorable associations[49]—for example, the "magic" name of the Masters Golf Tournament.[50]

The proper amount of protection states should grant against misappropriation has often been controversial.[51] But petitioners are in effect asking this Court to wipe out much of that policy debate and invalidate large chunks of state common law and legislation, by a proposed constitutional holding that the First Amendment forbids protecting a trade designation beyond the likelihood-of-confusion standard of the Lanham Act—converting that 1946 trade regulation into a constitutional straitjacket. Yet "courts are ill-equipped" to make judgments about the proper scope of rights under misappropriation law. *International News Service* v. *Associated Press*, *supra*, 248 U.S. at 267 (Brandeis, J., dissenting). And this Court has held in the related area of trade secrets that "States may hold diverse viewpoints in protecting intellectual property . . . . The only limitation on the States is that . . . they do not conflict with the operation of the laws in this area passed by Congress . . . ." *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470, 479 (1974).[52]

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[47] *Allied Maintenance Corp.* v. *Allied Mechanical Trades, Inc.*, 42 N.Y.2d 538, 369 N.E.2d 1162, 399 N.Y.S.2d 628 (1977).

[48] *Community Federal Savings & Loan Ass'n* v. *Orndorff*, 678 F.2d 1034, 1037 (11th Cir. 1982).

[49] *Sally Gee, Inc.* v. *Myra Hogan, Inc.*, 699 F.2d 621 (2d Cir. 1983); see also *Exxon Corp.* v. *Exxene Corp.*, 696 F.2d 544 (7th Cir. 1982).

[50] *Augusta National, Inc.* v. *Northwestern Mutual Life Ins. Co.*, 193 U.S.P.Q. 210 (S.D. Ga. 1976); see also *Instrumentalist Co* v. *Marine Corps League*, 694 F.2d 145 (7th Cir. 1982). See generally Schechter, *The Rational Basis of Trademark Protection*, 40 HARV. L. REV. 813 (1927).

[51] *E.g.*, Derenberg, *The Problem of Trademark Dilution and Anti-dilution Statutes*, 44 CALIF. L. REV. 439 (1956).

[52] In *Kewanee Oil*, *supra*, and *Goldstein* v. *California*, 412 U.S. 546 (1973), this Court rejected interpretations of prior decisions that

C. The Relief Granted Was Ordinary, Necessary and Appropriate.

Petitioners argue that they should not have been enjoined from using the label "Olympic," and that some sort of disclaimer appended to their promotional material would have sufficed. But the courts have held time and time again that when one entrepreneur adopts the trade name of another, a disclaimer or embellishment is not enough. See, *e.g.*, *Jacobs* v. *Beecham*, 221 U.S. 263, 272 (1911) (Holmes, J.); *Menendez* v. *Holt*, 128 U.S. 514, 521 (1888). The propriety of injunctive relief is "so clear" in such cases as seldom to warrant discussion. *Dallas Cowboys Cheerleaders, Inc., supra*, 604 F.2d at 206.

The difficulty with petitioners' argument is that they are not just marketing products and conducting competitions similar to USOC's. That they are free to do, and their right to do so is not challenged. What petitioners have attempted is to go further and appropriate USOC's label. In such cases, a disclaimer is not enough. Unlike corrective copy added to a misleading advertisement, *cf. Better Business Bureau of Metropolitan Houston, Inc.* v. *Medical Directors, Inc.*, 681 F.2d 397 (5th Cir. 1982), a disclaimer cannot keep up with a label.[83] If all that were needed were a disclaimer, the Amateur Sports Act would be effectively worthless. Anyone could circumvent it.

The cases in which petitioners attempt to find support for their disclaimer argument did not involve narrow restrictions like the present one, which allow abundant speech, and restrict only the labeling of an event and goods. Rather, those cases were instances where

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would have severely limited state misappropriation law. See *Sears, Roebuck & Co.* v. *Stiffel Co.*, 376 U.S. 225 (1964); *Compco Corp.* v. *Day-Brite Lighting, Inc.*, 376 U.S. 234 (1964).

[83] "[T]here is no First Amendment rule . . . requiring a State to allow deceptive or misleading commercial speech whenever the publication of additional information can clarify or offset the effects of the spurious communication." *Friedman* v. *Rogers, supra*, 440 U.S. at 12 n.11.

an entire message or performance had been banned.[54] No limit at all was placed on petitioners' message here. They were even free to claim, if they wanted, that their event was just as good as or better than the Olympic Games, and they did so. J.A. 402. All that they were prevented from doing was promoting and selling under the "Olympic" label.

Section 110 does not require confusion for a violation, and a disclaimer cannot cure the violation. The relief ordered by the courts below was ordinary, was clearly contemplated by the statute, and was not an abuse of discretion.[55]

III. ENFORCEMENT AGAINST PETITIONERS OF THE LABELING PROTECTION DID NOT VIOLATE ANY CONSTITUTIONAL PROVISION.

In the face of adverse findings below, total lack of evidence on their part, and overwhelming undisputed evidence to the contrary, petitioners continue to claim as they did from the beginning that they have been "selectively prosecuted." J.A. 99. And from this unsupported premise, they urge a radical holding that USOC should be treated in its litigative decisions as if it were an agency of government.

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[54] *E.g., In re R.M.J.*, 455 U.S. 191 (1982); *Consumers Union* v. *General Signal Corp.*, 724 F.2d 1044 (2d Cir. 1983), *cert. denied*, 469 U.S. 823 (1984); *Allen* v. *National Video, Inc.*, 610 F. Supp. 612 (S.D.N.Y. 1985). In *Champion Spark Plug Co.* v. *Sanders*, 331 U.S. 125 (1947), this Court explicitly recognized that where one entrepreneur markets goods under the name of another, a disclaimer is not enough, and "equity then steps in to prohibit defendant's use of the mark. . . ." 331 U.S. at 128.

[55] *A. T. Cross Co.* v. *Jonathan Bradley Pens, Inc.*, 470 F.2d 689 (2d Cir. 1972). See also, *e.g., Boston Professional Hockey Ass'n* v. *Dallas Cap and Emblem Mfg., Inc.*, 510 F.2d 1004, 1013 (5th Cir. 1975); see generally cases and empirical data collected in Jacoby & Raskopf, *Disclaimers in Trademark Infringement Litigation: More Trouble Than They Are Worth?*, 76 TRADEMARK REP. 35 (1986); Radin, *Disclaimers as a Remedy for Trademark Infringement: Inadequacies and Alternatives*, 76 TRADEMARK REP. 59 (1986).

A. Petitioners Made No Showing Whatsoever That They Were Victims of "Selective Prosecution."

As the District Court found, P.C.A. 123-25, the record in this case is utterly barren of any evidence that USOC singled out petitioners because of who they are.[56] In fact, it affirmatively shows the opposite. J.A. 363, 366. Petitioners' discrimination claim is nothing more than assertion, as even the dissenting judge below recognized. P.C.A. 40. Petitioners had full discovery for two years in the District Court, and still could not support their easy-to-allege discrimination charge. What the record does show is that since USOC was authorized to do so six years ago, it has consistently objected to use of the label "Olympic" for athletic contests, and has consented on only three occasions—the Special, Junior, and Explorer Olympics—all of them programs conducted by USOC's own members to carry out USOC's own Amateur Sports Act obligations. J.A. 57, 60. USOC has not consented to *any* other uses, except those it licenses to raise funds. J.A. 33-34. When this suit was brought, USOC had sought to prevent use of "Olympic" for all fifteen athletic contests brought to its attention, achieving compliance in nine with the rest pending. J.A. 61. Even petitioners admitted that other violators "in many instances" had received letters of warning from USOC. J.A. 51. The great bulk of those who receive such letters simply comply, *e.g.*, J.A. 435, as petitioners initially did here, J.A. 96, 365. In other instances, both before and after petitioners' violation, including one case against 128 different violators,[57]

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[56] USOC, the record is clear with no contrary evidence, did not refuse to allow petitioners use of the "Olympic" label because of their proclaimed homosexuality. See J.A. 131, 363, P.C.A. 123-25. Even if the case were different, however, there is ample authority holding that, for example, even trademark holders may enjoin uses reasonably judged likely to affect the designation's value, even in the absence of competition or possible confusion. See, *e.g.*, *Coca-Cola Co.* v. *Gemini Rising, Inc.*, 346 F. Supp. 1183 (E.D.N.Y. 1972).

[57] *USOC* v. *Various John Does*, No. CV 84-5515-RG (C.D. Cal. 1985); see pp. 37a-42a, *infra*.

USOC has gone to court.[58]

USOC's decisions on when to litigate are not unreasonable.[59] There are essentially five categories of uses of "Olympic" that are likely to occur:

1. To designate a major public exhibition of athletic contests.
2. For events—often one-time and usually local—which are not serious athletic contests, but rather are essentially shows. Examples are the "Crab-Cooking Olympics" or "Dog Olympics" referred to at P. Br. 8.
3. For trade goods, such as T-shirts, souvenirs, and the like.

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[58] Since the Amateur Sports Act was enacted, USOC has litigated to prevent use of "Olympic" or Olympic symbols in the following additional cases, most of them terminating with consent decrees: *National Amateur Sports Foundation* v. *USOC*, No. CA 80-496 (D.D.C. 1980), J.A. 392; *USOC* v. *Adelman Enterprises*, No. CV 83-2697 (C.D. Cal. 1983), J.A. 439; *USOC* v. *Colonial Coins, Inc.*, No. CA H-86-2912 (S.D. Tex. 1986); *USOC* v. *David Shoe Co.*, No. C-1-82-596 (S.D. Ohio 1982), J.A. 395; *USOC* v. *Intelicense Corp.*, 737 F.2d 263 (2d Cir. 1984), *cert. denied*, 469 U.S. 982 (1984); *USOC* v. *International Federation of Body Builders*, 219 U.S.P.Q. 353 (D.D.C. 1982), J.A. 443; *USOC* v. *March of Dimes Birth Defects Foundation*, No. CA 83-539 (D. Colo. 1983); J.A. 437; *USOC* v. *Mervyn's Inc.*, No. CV 83-6700 (C.D. Cal. 1983); *USOC* v. *Morse Shoe Co.*, No. CA 84-1012 (E.D. Va. 1984); *USOC* v. *Olympic Trails Bus Co.*, No. CA 80-2062 (D.C. Cir. 1980); J.A. 388; *USOC* v. *Romy's Ltd.*, No. CA 86-257 (D. Vt. 1986); *USOC* v. *The Roadshow, Inc.*, No. CV 84-4508 (C.D. Cal. 1984); *USOC* v. *Union Sport Apparel*, 220 U.S.P.Q. 526 (E.D. Va., 1983); *USOC* v. *Uniroyal, Inc.*, No. CA 83-0500-A (E.D. Va. 1983); *LaBranche* v. *USOC*, No. CV 85-481, (C.D. Cal. 1985). In addition, as of 1982 USOC had brought 22 oppositions to trademark applications by others, and one petition to cancel. J.A. 61. See, *e.g.*, *USOC* v. *Golden Age Olympics, Inc.*, Opp. No. 62,426, J.A. 383; *USOC* v. *Wilson Dist. Co.*, Opp. No. 70,684, p. 5a, *infra*. It has brought others since then.

[59] Respondents are aware of no rule, in trademark doctrine or elsewhere, that would require suing every violator. See *Sony Corp.* v. *Universal City Studios, Inc.*, 464 U.S. 417, 447 n.28 (1984); *United States Jaycees* v. *San Francisco Junior Chamber of Commerce*, 354 F. Supp. 61, 73 (N.D. Cal. 1972), *aff'd*, 513 F.2d 1226 (9th Cir. 1975).

4. In the name of some local retail business unconnected with athletic activities.

5. To solicit public donations.

USOC has been most concerned with activities in the first, third, and fifth categories, because they are the uses most likely to affect the value of the term "Olympic." Petitioners' use of "Olympic" falls squarely into those categories. Petitioners, in fact, have attempted to use the "Olympic" label for an event that more closely and consciously duplicates the modern Olympic Games, on a far grander scale, than any other violation of the statute of which USOC is aware. They are also the first who failed to comply and then trumpeted their defiance. J.A. 423, 427, 459-60.[60]

To litigate against every unauthorized use anywhere of "Olympic" in athletics or trade would be a very expensive undertaking which USOC could not afford. Not even the U.S. government tries to prosecute all violations of law. (In fact, it failed adequately to prosecute violations of the 1950 statute, which was why § 110 was passed.) USOC raises funds for athletics, not to pay for litigation. And understandably, USOC has been concerned by new unauthorized uses of "Olympic," like petitioners', more than ones, some of them "grandfathered," that have been in existence for many years prior to 1978.[61]

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[60] USOC has no vendetta against petitioners or anyone else. In fact, when petitioners at first agreed voluntarily to drop the word "Olympic," J.A. 34, 96, 365, USOC's executive director thanked them and wished them success in their event. J.A. 366; see *id.* 265. The District Court's finding that there was no "sinister cast" is entitled to respect on appellate review. *Inwood Labs., Inc.*, v. *Ives Labs.*, 456 U.S. 844, 858 (1982).

[61] The "California Police Olympics" to which petitioners devote so much space in their brief were asked by USOC to cease using the "Olympic" name, J.A. 33, as petitioners acknowledge. J.A. 97. Petitioners' tortured attempt, P. Br. 9, to read a vague letter from Switzerland at J.A. 250 as saying anything different is ridiculous. As petitioners also recognize, J.A. 100, that California activity was held for many years prior to the 1978 Act. USOC has not brought suit while the present case is pending.

In *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. 94 (1973), a claim was made that broadcast licensees were like government actors and violated the First Amendment when they refused to sell television time for political broadcasts. But this Court concluded that no First Amendment violation had occurred no matter how one characterized the licensees, and so "the governmental action issue does not affect the outcome of this case." 412 U.S. at 148 (Blackmun, J.); see also *id.* at 115 (Burger, C.J.); *id.* at 147 (White, J.). The present case can be treated in the same way. USOC's enforcement of the term "Olympic," as the record demonstrates, has not been arbitrary, irrational, invidious, or in any other respect differently motivated than, say, honest public officials deciding which prosecutions to bring. Petitioners' unsupported "selective prosecution" claim would fail even against government officials. No more is required of USOC.

B. USOC's Seeking To Enforce Protection Against Unauthorized Uses of Its Protected Designation Is Not Governmental Action.

The various "state action" theories urged by petitioners and their *amici* are no doubt familiar to this Court. They are all falsely premised on USOC having pursued an enforcement policy that a government could not have. They simply do not apply here.

1. *The Doctrine of* Shelley v. Kraemer *Does Not Apply.*

There is no occasion here for this Court to revisit the intellectually troubling[62] and very limited doctrine of *Shelley* v. *Kraemer*, 334 U.S. 1 (1948). Obviously, whenever a court, as here, rejects a litigant's First Amendment defense and issues an injunction, a constitutional decision has been rendered and the First Amendment

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[62] See, *e.g.*, Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 29-31 (1959); H. FRIENDLY, THE DARTMOUTH COLLEGE CASE AND THE PUBLIC-PRIVATE PENUMBRA 14-18 (1971).

ruling can be reviewed. *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 265 (1964). That is what much of this brief has been about.

Petitioners appear beyond that to be urging a very different proposition, resting not on the First Amendment but on equal-protection guarantees of the Fifth[63] and Fourteenth.[64] They argue that even if the *remedy* granted here did not violate the Constitution, the *decision to sue* them did. They would have it that when a litigant goes to court, the motivations for doing so can become an issue to be judicially tested as if the litigant were a government agency. But *Shelley* has never been expanded in that way—indeed, it has never been extended by this Court beyond the peculiar situation of racially restrictive covenants.[65] *Shelley*, moreover, involved only an interpretation of the Fourteenth Amendment of 1868, not, as here, of the First and Fifth Amendments of 1791. To import the peculiar Fourteenth Amendment state-racial-discrimination doctrine of *Shelley* into this case would ig-

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[63] The Fifth Amendment has not been brought under *Shelley*. *Shelley's* federal companion, *Hurd* v. *Hodge*, 334 U.S. 24 (1948), rested not on the Fifth Amendment or governmental action but rather on violation of a federal statute. 334 U.S. at 30.

[64] Constitutional limitations have been applied even more readily when there was an infringement of the Fifteenth Amendment's ban on racial denial of the franchise. It is no coincidence that *amici* rely so heavily on the two farthest-reaching Fifteenth Amendment cases, which themselves went well beyond any Fourteenth Amendment decisions. *Terry* v. *Adams*, 345 U.S. 461 (1953); *Smith* v. *Allwright*, 321 U.S. 649 (1944). Petitioners as a group, moreover, although they enjoy First Amendment rights to speak and associate, are not a specially protected minority in the sense of, *e.g.*, the Fourteenth Amendment's equal-protection guarantee as read into the Fifth. "Bluntly, blackness and homosexuality are not the same phenomenon." *Boy Scouts* v. *Teal*, 374 F. Supp. 1276, 1281 (E.D. Pa. 1974) (Higginbotham, J.).

[65] Even in this Court's last case before Title II of the 1964 Civil Rights Act, 78 Stat. 243 (1964), 42 U.S.C. § 2000a, mooted the issue whether the Fourteenth Amendment directly banned enforcement of trespass laws to enforce racial segregation, only one of the three Justices who concluded that it did relied to any significant

nore its uniqueness and its extremely limited application over the past four decades of this Court's jurisprudence, and would set constitutional limits on private behavior with no logical limits.

2. *USOC Is Not a Governmental Body.*

Petitioners' other Fourteenth-Amendment-type theories for converting USOC into a government agency are also far-fetched, and at best irrelevant on this record.

Every court to consider the matter has ruled that USOC is not directly subject to the constitutional restrictions applied to governments. *DeFrantz* v. *United States Olympic Committee*, 701 F.2d 221 (D.C. Cir. 1980), *affirming mem.* 492 F. Supp. 1181 (D.D.C. 1980), rejected First,[66] Fifth and Ninth Amendment challenges to USOC's debated decision to respond to governmental urging to boycott the 1980 Olympic Games. Another court likewise found that "the USOC is a self governing body, operating independently of public control." *Burton* v. *United States Olympic Committee*, 574 F. Supp. 517, 524 (C.D. Cal. 1983); *accord*, *Gault* v. *International Olympic Committee* (C.D. Cal. 1984), p. 16a, *infra*; *cf. Stearns* v. *Veterans of Foreign Wars*, 394 F. Supp. 138, 144 (D.D.C. 1975), *aff'd mem.*, 527 F.2d 1387, *cert. denied*, 429 U.S. 822 (1976).[67]

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extent on *Shelley*. *Bell* v. *Maryland*, 378 U.S. 226, 255-59 (1964) (Douglas, J., concurring). Three Justices limited *Shelley* as based upon a violation of federal civil rights legislation and interference with the property rights of a willing buyer and a willing seller. See 378 U.S. at 328-33 (Black, J., joined by Harlan and White, JJ., dissenting).

[66] Petitioners say that the presence of a First Amendment claim distinguishes the present case from *DeFrantz*, P. Br. 29, yet the First Amendment was exactly what the plaintiffs in *DeFrantz* invoked. See 492 F. Supp. at 1185, 1192.

[67] In *Martin* v. *International Olympic Committee*, 740 F.2d 670 (9th Cir. 1984), a suit to require additional events for women in the 1984 Olympics, the Ninth Circuit without additional explanation said in dictum that "we cannot say, on this record, that the district court erroneously found state action present;" but the "state ac-

USOC is not "a state-created organization," nor "an agent of the federal government." A. Br. I 50, 8. USOC "is an independent body, and nothing in its chartering statute gives the federal government the right to control . . . ." *DeFrantz* v. *USOC*, *supra*, 492 F.Supp. at 1194.[68] It is defined by statute as a "private corporation established under Federal law." 36 U.S.C. § 1101(46). The House Report on the Amateur Sports Act emphasized that USOC "is not a U.S. entity." H.R. Rep. No. 95-1627, 95th Cong., 2d Sess. 6 (1978). The IOC would not allow it to be.[69]

USOC is and always has been privately supported. The only occasion on which USOC received any appropriation from the federal government was in 1980, when Congress made a one-time grant of $10 million to help USOC recover some of the losses it incurred by boycotting the 1980 Olympic Games in Moscow; that was most analogous to a private bill for a particular injury, and was characterized by Congress as "a form of disaster

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tion" was with respect not to USOC, but to the Los Angeles Olympic Organizing Committee, which in the circumstances a district court dictum concluded was an arm of the City of Los Angeles. See *Martin* v. *International Olympic Committee*, No. CV 83-5847 Kn (C.D. Cal. Apr. 16, 1984), slip op. at 19.

[68] By contrast, *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961), a Fourteenth Amendment authority on which petitioners principally rely, involved a publicly funded and publicly maintained building. *Burton* like *Shelley* v. *Kraemer*, *supra*, has not given rise to subsequent decisions of this Court, with the possible exception of *Evans* v. *Newton*, 382 U.S. 296 (1966), and to some extent reflects the imperatives of its time. *Cf.* H. FRIENDLY, *supra*, at 41 n.140.

[69] IOC Rule 24C, p. 23a, *infra*, provides:

> "NOCs must be autonomous and must resist all pressures of any kind whatsoever, whether of a political, religious or economic nature. In pursuing their objectives, NOCs may cooperate with private or government organizations. However, they must never associate themselves with any undertaking which would be in conflict with the principles of the Olympic Movement and with the Rules of the IOC."

payment."[70] In any event, government subsidy would not of itself make an activity governmental action. *Polk County* v. *Dodson*, 454 U.S. 312 (1981). Otherwise, for example, nearly every farmer in the United States would be a government official. See, *e.g.*, *Rendell-Baker* v. *Kohn*, 457 U.S. 830 (1982).[71]

Some of the confusion in petitioners' submissions stems from the fact that the Amateur Sports Act of 1978 is first and foremost a corporate charter. See 92 Stat. 3045, § 1, as amended, 36 U.S.C. § 371. Federal charters of private corporations, like state-granted corporate charters, describe the purposes, usually in broad terms. "The objects for which a corporation is created are universally such as the government wishes to promote." *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518, 637 (1819). Here they include various aspects of promoting amateur athletics, as well as all the standard corporate powers such as to make contracts, own property, borrow money, sue and be sued, and the duty to

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[70] See S.Rep. No. 96-829, 96th Cong., 2d Sess. 241 (1980); Act of July 8, 1980, 94 Stat. 857, 898. "Private contributions to the USOC have declined dramatically since the January action by the Congress and the President's announcement of our intent to boycott the Moscow games." Hearings Before Subcommittee of Senate Appropriations Committee, May 14, 1980 (unpub.) (testimony of Under Secretary of Commerce Herzstein). Of the $10 million, $6 million was a matching grant conditioned on equal private donations. In 1978 $16 million for USOC had been authorized, Jt. Res. of Oct. 18, 1978, § 113(a), 92 Stat. 1603, 1605, but not appropriated. A $30 million payment proposed in the House committee version of the Amateur Sports Act was never enacted. See H.R. Rep. No. 95-1627, 95th Cong., 2d Sess. 18 (1978).

Congress in the Olympic Commemorative Coin Act, Act of July 22, 1982, 96 Stat. 222, authorized the one-time issuance of commemorative coins displaying respondents' designations honoring the 1984 summer Olympic Games, with a portion of the profits from sales to collectors to go to USOC; the act specifically required that there be "no net cost to the United States Government." *Id.*, § 10(a).

[71] See also *Blum* v. *Yaretsky*, 457 U.S. 991 (1982); *Flagg Bros., Inc.* v. *Brooks*, 436 U.S. 149 (1978).

file annual reports. See 92 Stat. 3046-47, 3049-50, § 1, as amended, 36 U.S.C. §§ 374, 375, 382a, 391.[72]

A corporate charter certainly does not *ipso facto* create an arm of the government, unless all the organizations in Title 36 of the United States Code, and all the national banks (which unlike USOC in addition are heavily regulated), and presumably all state-incorporated companies, are also.[73] Nor are organizations which are chartered to perform good works automatically state entities. Nor did Congress by imposing some duties make USOC governmental. Congress chose in a small way to regulate amateur sports, as it more extensively does businesses, air purity, securities traders and automobiles. It did not choose to nationalize them.

USOC does not exercise any monopoly over amateur athletics in the United States, see, *e.g.*, Amateur Athletic Act § 206, 36 U.S.C. § 396 (and even if it did, would not thereby become a government agency, *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345 (1974)). That would be a gargantuan task, indeed, even if one accepted petitioners' improbable assertion that it should be regarded as a "governmental function," albeit one "that was not performed by anyone." A. Br. I 50. USOC's activities are much more modest. They are set forth in § 104 of

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[72] For example, the federal charter's recognition that USOC has "exclusive jurisdiction . . . over all matters pertaining to participation of the United States in the Olympic Games," § 104(3), 36 U.S.C. § 374(3), merely parallels the authority USOC has under the IOC charter. See IOC Charter § 24, pp. 22a-23a, *infra*.

[73] "From the fact, then, that a charter of incorporation has been granted, nothing can be inferred which changes the character of the institution. . . ." *Trustees of Dartmouth College* v. *Woodward*, *supra*, 4 Wheat. at 638. "In writing this legislation, Congress did not create a new relationship between the USOC and the IOC. Rather, it recognized an already long-existing relationship between the two and statutorily legitimized that relationship with a federal charter and federal incorporation." *DeFrantz* v. *United States Olympic Committee*, 492 F. Supp. 1181, 1187 (D.D.C.), *aff'd mem.*, 701 F.2d 221 (D.C. Cir. 1980) (footnote omitted); 124 CONG. REC. S7095-96, H10745, H12285 (1978).

its charter, 36 U.S.C. § 374. It supervises the selection of athletes from the United States for the Pan American and Olympic Games, it acts as a liaison with the International Olympic Committee, and it organizes the Olympic Games when they are held in the United States. It is difficult to understand how USOC could be subjected to petitioners' "state action" theory without sweeping in a host of other private groups.[74]

Petitioners' *amici* argue that without petitioners' expanded governmental-action doctrine, "USOC *could* discriminate on the basis of race, religion or ethnic background (as well as on the basis of sexual orientation or the content of expression)", and that "There *would be nothing to prevent* USOC from licensing only white supremacist organizations." A. Br. I 10. But nothing in the record shows USOC has actually done any of those things or proposes to do them. Petitioners' position is reduced to "what-ifs" because the record is totally devoid of any support for the assertion that USOC has any malevolent intent. Moreover, Congress and the states have found better ways to protect minority rights than by contorting constitutional doctrine. USOC like other persons in this country is subject to a wide variety of civil rights laws. *Cf. Roberts* v. *United States Jaycees, supra.* California's Unruh law, for example, prohibits discrimination against homosexuals.[75] And Congress in the charter

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[74] *Cf., e.g., Jackson* v. *American Bar Ass'n*, 538 F.2d 829 (9th Cir. 1976); *New York City Jaycees, Inc.* v. *United States Jaycees, Inc.*, 512 F.2d 856 (2d Cir. 1975); *Stearns* v. *Veterans of Foreign Wars, supra.* USOC conducts many activities much more controversial than objecting to unauthorized uses of "Olympic." "[T]here can be few less suitable bodies than the federal courts for determining the eligibility or the procedures for determining the eligibility, of athletes to participate in the Olympic Games." *Michels* v. *United States Olympic Committee*, 741 F.2d 155, 159 (7th Cir. 1984) (concurring opinion); see also *Oldfield* v. *Athletic Congress*, 779 F.2d 505 (9th Cir. 1985).

[75] CAL. CIV. CODE § 51. *See Curran* v. *Mount Diablo Council*, 147 Cal. App. 3d 712, 195 Cal. Rptr. 325 (1983), *appeal dismissed*, 468 U.S. 1205 (1984); *Hubert* v. *Williams*, 183 Cal. App. 3d Supp. 1, 184 Cal. Rptr. 161 (Cal. Super. 1982).

itself has required USOC to obey special antidiscrimination requirements. See §§ 104(12), (13), (14), § 201(b)(6)(7), 36 U.S.C. §§ 374(12), (13), (14), § 391(b)(6), (7). The imagined discriminatory policies to which petitioners' case is reduced thus are not just hypotheticals; they approach legal impossibilities.[76]

CONCLUSION

For the reasons stated, the judgment should be affirmed.

Respectfully submitted,

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January 5, 1987

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[76] "The delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases thus imagined." *United States* v. *Raines*, 362 U.S. 17, 22 (1960).

ADDENDA

ADDENDUM A

The Amateur Sports Act of 1978, § 110, 92 Stat. 3045, 3048, 36 U.S.C. § 380, provides:

Use of Olympic symbols, emblems, trademarks and names

(a) Without the consent of the Corporation, any person who uses for the purpose of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition—

(1) the symbol of the International Olympic Committee, consisting of 5 interlocking rings;

(2) the emblem of the Corporation, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 interlocking rings displayed on the chief;

(3) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, the International Olympic Committee or the Corporation; or

(4) the words "Olympic", "Olympiad", "Citius Altius Fortius", or any combination or simulation thereof tending to cause confusion, to cause mistake, to deceive, or to falsely suggest a connection with the Corporation or any Olympic activity;

shall be subject to suit in a civil action by the Corporation for the remedies provided in the Act of July 5, 1946 (60 Stat. 427; popularly known as the Trademark Act of 1946). However, any person who actually used the emblem in subsection (a)(2), or the words, or any combination thereof, in subsection (a)(4), for any lawful purpose prior to September 21, 1950, shall not be prohibited by this section from continuing such lawful use for the same purpose and for the same goods or services. In addition, any person who actually used, or whose assignor actually used, any other trademark, trade name,

sign, symbol, or insignia described in subsections (a)(3) and (4) for any lawful purpose prior to enactment of this Act shall not be prohibited by this section from continuing such lawful use for the same purpose and for the same goods or services.

(b) The Corporation may authorize contributors and suppliers of goods or services to use the trade name of the Corporation as well as any trademark, symbol, insignia, or emblem of the International Olympic Committee or of the Corporation in advertising that the contributions, goods, or services were donated, supplied, or furnished to or for the use of, approved, selected, or used by the Corporation or United States Olympic or Pan-American team or team members.

(c) The Corporation shall have exclusive right to use the name "United States Olympic Committee"; the symbol described in subsection (a)(1); the emblem described in subsection (a)(2); and the words "Olympic", "Olympiad", "Citius Altius Fortius" or any combination thereof subject to the preexisting rights described in subsection (a).

ADDENDUM B

The Act To Incorporate the United States Olympic Association Act of September 21, 1950, ch. 973, § 9, 64 Stat. 899, 901, provided:

> "That from and after the passage of this Act, it shall be unlawful for any person within the jurisdiction of the United States to falsely or fraudulently hold himself out as or represent or pretend himself to be a member of or an agent for the United States Olympic Association or its subordinate organizations for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the insignia thereof for the fraudulent purpose of inducing the belief that he is at such time a member of or an agent for the United States Olympic Association or its subordinate organizations. It shall be unlawful for any person, corporation, or association, other than the United States Olympic Association or its subordinate organizations and its duly authorized employees and agents for the purpose of trade, theatrical exhibition, athletic performance, and competition or as an advertisement to induce the sale of any article whatsoever or attendance at any theatrical exhibition, athletic performance, and competition or for any business or charitable purpose to use within the territory of the United States of America and its exterior possessions, the emblems of the United States Olympic Association consisting of an escutcheon having a blue chief and vertically extending alternate red and white bars on the base with five interlocked rings displayed on the chief, or any other sign or insignia made or colored in imitation thereof, or the words "Olympic", "Olympiad", or "Citius Altius Fortius" or any combination of these words: *Provided, however,* That any person, corporation, or association that actually used, or whose assignor actually used, the said emblem, sign, insignia, or words for any lawful pur-

pose prior to the effective date of this Act, shall not be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class or classes of goods to which said emblem, sign, insignia, or words had been used lawfully prior thereto. If any person violates the provision of this section he shall be deemed guilty of a misdemeanor, and upon conviction in any Federal court shall be liable to fine of not less than $100 or more than $500 or imprisonment for a term not exceeding 1 year, or both, for each and every offense."

The Act To Change the Name of the United States Olympic Association, Act of August 10, 1964, 78 Stat. 383, provided:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the corporation known as the United States Olympic Association, which was incorporated by the Act entitled "An Act to incorporate the United States Olympic Association," approved September 21, 1950 (64 Stat. 899), shall be known and designated hereafter as the United States Olympic Committee and any reference to such corporation under the name of the United States Olympic Association shall be held in refer to such corporation under and by the name of the United States Olympic Committee."

ADDENDUM C

[SEAL]

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Opposition No. 70,684

UNITED STATES OLYMPIC COMMITTEE

v.

WILSON DISTRIBUTING CO., INC.

MAILED
MAY 05 1986
PAT. & T.M. OFFICE

An application has been filed by Wilson Distributing Co., Inc. to register the mark "OLYMPIC" for janitorial cleaning and finishing preparations,[1] use since March 3, 1983 being asserted.

Registration has been opposed by the United States Olympic Committee essentially on the grounds that by virtue of 36 U.S.C. § 380, opposer is entitled to use and authorize use, as well as prevent registration, of "OLYMPIC" for any goods; that under the provisions of that section, applicant is precluded from registering the mark "OLYMPIC", which cannot be lawfully used in commerce without the consent of opposer; that opposer has not consented to or authorized applicant's use and registration of the mark "OLYMPIC"; that applicant's first use of the mark for the goods reicted in its application occurred in 1983; that the mark "OLYMPIC" cannot serve to exclusively identify applicant's goods, and appli-

[1] Serial No. 457,932, filed December 20, 1983.

cant cannot be the owner of the mark, where opposer possesses a superior lawful and exclusive right to authorize the use of "OLYMPIC" for the same goods; and that applicant's use of the mark "OLYMPIC" creates the mistaken impression that applicant's goods are promoted, authorized, sponsored, endorsed or associated with opposer or an Olympic-related activity in violation of 36 U.S.C. § 380 and 15 U.S.C. § 1052(d).

Applicant, in its answer to the notice of opposition, has admitted that its first known use of its mark was in 1983 and that opposer has not consented to or authorized applicant's use and registration of the mark "OLYMPIC." However, applicant takes the position that 36 U.S.C. § 380 prohibits use of "OLYMPIC" only when such use tends to cause confusion, to cause mistake, to deceive, or to falsely suggest a connection with opposer or any Olympic activity. Moreover, applicant has specifically denied that such prohibition includes the goods recited in its application; that such statute precludes applicant from registering the mark "OLYMPIC"; and that the consent of opposer is necessary for applicant's use to be lawful. Applicant has also denied the remainder of the salient allegations contained in the notice of opposition.

This case now comes up on opposer's motion for summary judgment filed August 22, 1985. As grounds therefor, opposer asserts essentially that there are no genuine issues of material fact and that opposer is entitled to judgment as a matter of law. In support of its motion for summary judgment, opposer cites, inter alia, applicant's admissions that opposer has not consented to applicant's use and registration of the mark "OLYMPIC," and that applicant claims no use of "OLYMPIC" before 1983. Opposer also relies on Section 380(c) of the Amateur Sports Act, 36 U.S.C. § 380(c), which provides, with respect to opposer, that:

> (c) The corporation shall have exclusive right to use the name "United States Olympic Committee";

> the symbol described in subsection (a)(2) of this section; and the words "Olympic," "Olympiad," "Citrus Altius Fortius" or any combination thereof subject to the preexisting rights described in subsection (a) of this section.

Applicant's brief in opposition to the motion for summary judgment reads, in full, as follows:

> Applicant opposes the Motion for Summary Judgment filed by Opposer. There has been *no* actual confusion; Opposer has not established *any* likelihood of confusion; and, moreover, Opposer's laches prevent Opposer from prevailing. In short, there are several factual issues in this case which preclude the granting of a Motion for Summary Judgment.

We believe that opposer's motion for summary judgment is well taken as a matter of law. While "likelihood of confusion" is the standard to be applied in oppositions based upon Section 2(d) of the Trademark Act of 1946, 15 U.S.C. 1052(d), no such standard is laid down in 36 U.S.C. § 380(c), which simply provides, in part, that opposer shall have the *exclusive right* to use the word "Olympic," subject to any preexisting rights described in subsection (a) of the section. There is no question here of applicant having such preexisting rights, because applicant claims use only since 1983, a date long after the enactment of this statutory provision. Thus, under 36 U.S.C. § 380(c), opposer has the exclusive right to use the word "Olympic." Inasmuch as opposer's exclusive right to use "Olympic" is unconditional, applicant, as a matter of law, cannot be the owner of the mark "OLYMPIC", nor can it lawfully use such mark in commerce without opposer's consent. See: U.S. Olympic Committee v. Olymp-Herrenwaschefabriken Bezner, 224 USPQ 497 (TTAB 1984) [wherein the Board specifically recognized that Section 380(c) of the Amateur Sports Act vests in opposer the exclusive rights in, inter alia, "Olympic", and hence would serve as an adequate ground of opposition if some party, in contra-

vention of opposer's statutory rights, attempted to register that designation].

Applicant's claim, in its brief in opposition to the motion for summary judgment, that opposer is prevented from prevailing herein by laches, is not well taken. First, laches is an affirmative defense which must be pleaded in order to be considered. See: Taffy's of Cleveland, Inc. v. Taffy's, Inc., 189 USPQ 155 (TTAB 1975), and cases cited therein. In the present case, applicant's answer to the notice of opposition contains no pleading of laches. Second, when a motion for summary judgment is made and supported as provided in Rule 56 of the Federal Rules of Civil Procedure, an adverse party may not rest upon mere allegations or denials, but rather must, by affidavit or as otherwise provided in Rule 56 (e) set forth specific facts showing that there is a genuine issue for trial. See: Pure Gold Inc. v. Syntex (U.S.A.), Inc., 739 F.2d 624, 222 USPQ 741 (CAFC 1984), aff'g 221 USPQ 151 (TTAB 1983), and Johnson & Johnson v. Bebe International, Inc., 175 USPQ 382 (TTAB 1982). Applicant here has made no such showing. Finally, it has been held that the Lanham Act defenses are not available to a defendant in a proceeding based upon the Amateur Sports Act. See: International Olympic Committee v. San Francisco Arts and Athletics, —— F.2d ——, 228 USPQ 585, 587 (CA 9 1986).

For the foregoing reasons, we conclude that there are no genuine issues of material fact as to the questions of whether applicant is the owner of the mark "OLYMPIC" for janitorial cleaning and finishing services, and whether applicant's use of the mark for such goods has been lawful; and that opposer is entitled to summary judgment on these issues as a matter of law.[2]

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[2] It is also clear that there is no genuine issue of material fact as to opposer's standing to bring this proceeding, and that opposer has such standing as a matter of law. See: U.S. Olympic Committee v. Olymp-Herrenwaschefabriken Bezner, supra, at page 500.

Accordingly, opposer's motion for summary judgment is granted, the opposition is sustained, and registration to applicant is refused.[3]

/s/ J. E. Rice
J. E. RICE

/s/ L. E. Rooney
L. E. ROONEY

/s/ G. D. Krugman
G. D. KRUGMAN
Members, Trademark Trial and Appeal Board

[3] In view of the granting of the motion for summary judgment, opposer's motion to compel, filed September 6, 1985, is moot.

ADDENDUM D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

No. 83-44

INTERNATIONAL SPORTS MARKETING, INC.

v.

INTERNATIONAL OLYMPIC COMMITTEE and
UNITED STATES OLYMPIC COMMITTEE

No. 82-278

UNITED STATES OLYMPIC COMMITTEE

v.

MILLSPORT, INC., et al.

ORDER

Intelicense by letter of June 19, 1984 to the court in response to the clerk's letter of June 11, 1984 has indicated that a hearing would adduce evidence that use of the International Olympic Committee name with no particular emphasis on the word "Olympic" in connection with the pictograms without the rings "would not tend to cause confusion, mistake or deception . . . a question

of fact . . . subject to evidentiary findings." International Sports Marketing, Inc., (ISM) by letter brief of June 25, 1984, while taking no formal position on the necessity of a hearing, argues that 36 U.S.C. § 380(a)(4) permits the use of the word "Olympic" in the name of the International Olympic Committee, as indicated by the "Grandfather" provisions of Section 380(a) and (c), at least if "strictly limited to unexaggerated lettering of standard size print for descriptive purposes only and not visually appearing in proximity with the pictogram so as to create any logos containing the word 'Olympic.'"

Reading of the opinion of the court of appeals, *United States Olympic Committee v. Intelicense Corp., S.A.*, Nos. 83-9025, 83-9063 (2d Cir. June 18, 1984), slip op. 4521-32 and especially 4529, convinces this court, however, that holding a hearing would be futile. This is true since, to sustain an injunction under 36 U.S.C. § 380(4) as to the use of the word "Olympic," no showing of a tendency to cause confusion, mistake or deception is necessary; it is only a "combination or simulation" which must have such a tendency. As to use of the International Olympic Committee name under § 380(a)(3) or (4), while the ISM argument has some appeal in the abstract, the opinion of the court of appeals, as well as the prior findings of this court, makes it clear that the I.O.C.'s authorization to utilize the official pictograms of the I.O.C. or to refer to the I.O.C. in connection therewith was conditioned in fact and by law (36 U.S.C. § 380) on Intelicense's obtaining the consent of the United States Olympic Committee, consent which has not been obtained.

Therefore, no hearing being necessary, the judgment and injunction previously entered are hereby modified to read as follows:

(a) Defendants Intelicense Corporation S.A. and International Sports Marketing, Inc., including their respective successors or assigns, officers,

representatives, agents, servants, employees, and any related company as defined in 15 U.S.C. § 1127, shall be and are hereby permanently enjoined from using or causing to be used in any manner without the consent of the United States Olympic Committee for the purpose or trade or to induce the sale of any goods or services in the United States:

(1) the Olympic symbol or any emblem containing five interlocking rings or any colorable imitation or simulation thereof, including colored rectangular panels or parallelograms;

(2) the word "Olympic" or any colorable imitation or simulation thereof, whether or not in conjunction with the words "International" and "Committee;"

(3) the representations "Official International Olympic Committee Pictograms," "Official Olympic Pictogram," "Official IOC-Pictograms," "Official IOC Summer Olympic Pictograms," or variations thereof,

(4) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by the United States Olympic Committee.

(b) Defendants shall immediately serve a copy of this Amended Judgment, as well as the entire decision rendered by the Court of Appeals for the Second Circuit on June 18, 1984 in connection with Docket Nos. 83-9025 and 83-9063 upon their respective officers, agents, employees, and related companies as that term is defined in 15 U.S.C. § 1127, as well as prospective licensees, and shall file with the court within thirty days as well as serve upon the United

States Olympic Committee a certified statement listing all persons so notified.

Judgment is entered pursuant to Rule 54(b), Federal Rules of Civil Procedure.

/s/ James L. Oakes,
JAMES L. OAKES,
Sitting as a District Judge.
U.S. Circuit Judge

ADDENDUM E

New York General Business Law § 397 (1984) provides:

Unlawful use of name or other identification of certain non-profit organizations

1. No person, firm, association or corporation shall use, for advertising purposes or for purposes of trade, the name, symbol, device or other identification of any non-profit corporation, association, society or organization organized exclusively for religious, benevolent, humane, charitable, educational, hospital, patriotic, fraternal or veterans purposes or to promote the study or the advancement of the arts or sciences or to sustain, encourage or promote the musical or performing arts, without having first obtained the written consent of such non-profi corporation, association, society or organization. Any violation of this section shall be a misdemeanor.

2. Subdivision one of this act shall not apply to the use by any person, firm, association or corporation of any trade mark, trade name or other trade identification which was adopted and regularly used by such person, firm, association or corporation, prior to the enactment of this act if the use of such trade mark, trade name, or other trade identification was and is otherwise lawful but for the provisions of subdivision one of this act. Nothing contained in this act shall be construed so as to prohibit the use of any name, symbol, device or other identification when used solely for purposes of historical reference or description of geographical location only and not as a trade mark or trade name or for purposes of trade identification.

3. Whenever there shall be an actual or threatened violation of subdivision one of this section, the corporation, association, society or organization affected thereby may maintain an equitable action in the supreme court of this state to prevent and restrain said actual or threatened violation; and may also sue and recover damages

for any injuries sustained by reason of any such violation, and if the defendant shall have knowingly violated subdivision one of this section, the jury, in its discretion may award exemplary damages.

4. Nothing contained in this act shall deprive any corporation, association, society or organization entitled to invoke the remedies provided by this act of any rights or remedies existing at common law or under the penal law or any other law of this state.

ADDENDUM F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV-84-2353-CBM

WILLIE JAMES GAULT,
Plaintiff,

v.

INTERNATIONAL OLYMPIC COMMITTEE, et al.,
Defendants.

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

Plaintiff's Motion for Preliminary Injunction is DENIED. The Court finds that plaintiff has failed to exhaust his administrative remedies, which are provided in the Amateur Sports Act of 1978, 36 U.S.C. §§ 371 *et seq.* by failing to arbitrate this matter before the American Arbitration Association.

The Court also finds that while plaintiff may suffer irreparable injury, he has not demonstrated that there is a substantial probability that he will succeed on the merits. The Amateur Sports Act appears to grant authority to the United States Olympic Committee to establish National Governing Bodies (NGB's), such as The Athletic Congress, which are to "conduct amateur athletic competition in the United States and establish procedures for the determination of eligibility standards for partici-

pation in such competitions . . ." and to "recommend to the Corporation (the USOC) individuals and teams to represent the United States in the Olympic Games . . . ." 36 U.S.C §§ 393(5) and (6). The acts of which plaintiff complains as "group boycott" violations of the antitrust laws appear to have been sanctioned by Congress.

Plaintiff has not demonstrated that there is a substantial probability that he will succeed on his pendent Cartwright Act and common law claims; *see Partee v. San Diego Chargers Football Co.*, 34 Cal. 3d 378 (1983). Plaintiff has not demonstrated that there is a substantial probability that he will prevail on his due process, equal protection and civil rights claims; he has failed to provide any evidence that any of the defendants are "state actors", *see DeFrantz v. United States Olympic Committee*, 492 F. Supp. 1181 (D.D.C. 1980), *aff'd.* 701 F. 2d 221 (D.C.Cir. 1980).

Plaintiff has also failed to demonstrate that serious questions are raised and that the balance of hardships tips sharply in his favor.

Dated: 5/29/84

/s/ Consuelo B. Marshall
CONSUELO B. MARSHALL
United States District Judge

ADDENDUM G

INTERNATIONAL OLYMPIC CHARTER 1985

OLYMPIC CHARTER 1985

(Excerpts)

RULES

1. FUNDAMENTAL PRINCIPLES

1 The aims of the Olympic Movement are:

—to promote the development of those physical and moral qualities which are the basis of sport.

—to educate young people through sport in a spirit of better understanding between each other and of friendship, thereby helping to build a better and more peaceful world,

—to spread the Olympic principles throughout the world, thereby creating international goodwill,

—to bring together the athletes of the world in the great four-yearly sport festival, the Olympic Games.

2 The Olympic Games consist of the Games of the Olympiad and the Olympic Winter Games.

In this Charter, the expression "Games" means the Games of the Olympiad, and the expression "Winter Games" means the Olympic Winter Games.

The expression "Olympiad" means a period of four successive years which follows the Games.

The first Olympiad of modern times was celebrated in Athens in 1896, and subsequent Olympiads and Games are numbered consecutively from that year, even though it has been impossible to hold the Games in every Olympiad.

3 The Olympic Games take place every four years. They unite Olympic competitors of all countries in fair and equal competition.[1]

The International Olympic Committee (IOC) shall secure the widest possible audience for the Olympic Games.

No discrimination in them is allowed against any country or person on grounds of race, religion or politics.

4 The IOC governs the Olympic Movement and owns the rights over the Olympic Games. Its constitution and powers are set out in the present Rules and bye-laws.

Every person or organization that plays any part whatsoever in the Olympic Movement shall accept the supreme authority of the IOC and shall be bound by its Rules and submit to its jurisdiction.

• • • •

9 The Games are contests between individuals and teams and not between countries.

10 The Olympic Games are the exclusive property of the IOC which owns all rights over their organizations and exploitation and over their transmission and reproduction by any means whatsoever. The IOC may grant concessions or licences in respect of these rights.

Any surplus derived from the holding of the Olympic Games must be applied to the promotion of the Olympic Movement or to the development of sport.

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[1] See Rule 32 for the duration of the Games.

II. THE INTERNATIONAL OLYMPIC COMMITTEE

11 Juridical status, objects and powers

The IOC was created by the Congress of Paris of 23rd June 1894; it was entrusted with the control and development of the modern Olympic Games.

It is a body corporate under international law having juridical status and perpetual succession. Its headquarters are in Switzerland. It is not formed for profit and has as its aims:

—to encourage the organization and development of sport and sports competitions;

—to inspire and lead sport within the Olympic ideal, thereby promoting and strengthening friendship between the sportsmen of all countries;

—to ensure the regular celebration of the Olympic Games;

—to make the Olympic Games ever more worthy of their glorious history and of the high ideals which inspired their revival by Baron Pierre de Coubertin and his associates.

12 Membership

The IOC is a permanent organization. It selects such persons as it considers qualified to be members, provided that they speak French or English and are citizens of and reside in a country which possesses an NOC recognized by the IOC. The IOC welcomes them into membership with a brief ceremony during which they accept the required obligations and responsibilities.[1]

There shall be only one member in any country except in the largest and most active countries in the Olympic Movement, and in those where the Olympic Games have been held, where there may be a maximum of two.

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[1] See page 38.

Members of the IOC are representatives of the IOC in their countries and not their delegates to the IOC. They may not accept from governments or from any organizations or individuals instructions which shall in any way bind them or interfere with the independence of their vote.

Members who resign after long and active service in the IOC may be considered for election as honorary members upon the proposal of the Executive Board. Such honorary members may attend the Olympic Games and the Congress under the same conditions as the IOC members.

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23 Supreme authority

The IOC is the final authority on all questions concerning the Olympic Games and the Olympic Movement.

On all matters, including matters of discipline affecting all concerned, and for permanent and temporary penalties of all kinds, the heaviest of which are: suspension, expulsion, disqualification, exclusion, the powers of the IOC are paramount. It delegates to the IFs, however, the technical control of the sports which they govern. The delegation of judicial power is set out in a bye-law.

III. THE NATIONAL OLYMPIC COMMITTEES

24 [1] National Olympic Committees

A. *Principles*

For the furtherance of the Olympic Movement throughout the world, the IOC shall recognize as NOCs entitled to call themselves by that name, committees that are established in accordance with the under-mentioned principles, that enforce Rules and bye-laws of the IOC, and having, if possible, legal status.[2]

In the case of an IOC being in an irregular situation beyond its control necessitating its suspension by the IOC, the Executive Committee of the NOC remains its unofficial representative. The Executive Board of the IOC can, upon advice from the member(s) of the NOC of this country or this region, should the occasion arise, authorize the participation of this executive committee in Olympic meetings, until such time as the situation be settled definitively.

B. *Objects*

The object of NOCs, in accordance with the fundamental principles contained in these Rules, shall be to ensure the development and safeguarding of the Olympic Movement and sport. NOCs shall be the sole authorities responsible for the representation of their respective countries at the Olympic Games as well as at other events held under the patronage of the IOC, and to see that arrangements are made for the organization of other events when they are held in their own country.

The IOC may help the NOCs to fulfil their mission through the Olympic Solidarity programme.

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[1] See page 41.

[2] See also "Model Constitution for a National Olympic Committee", page 101.

C. *Autonomy*

NOCs must be autonomous and must resist all pressures of any kind whatsoever, whether of a political, religious or economic nature. In pursuing their objectives, NOCs may co-operate with private or government organizations. However, they must never associate themselves with any undertaking which would be in conflict with the principles of the Olympic Movement and with the Rules of the IOC.

D. *Composition*

Whatever form their constitution may take, NOCs must in any event include in their membership:

—the members of the IOC in their country, if any. Such IOC members shall, as of right, also be members of the Executive Committee (inner committee, administrative committee or the executive) and shall have the right to vote on it in both the General Assembly and the Executive Committee (inner committee, administrative committee or the executive);

—all the national federations affiliated to the IF recognized by the IOC as controlling their sport (with a minimum of five federations, at least three of which must govern a sport included on the Olympic programme) or the representatives they have nominated. These national federations or their representatives as chosen by them must also constitute the voting majority on this NOC and its Executive Board;

—where it is a question of specifically Olympic matters, only the votes of the NOC's Executive Board and of the national federations affiliated to an IF governing a sport included in the Olympic programme are taken into consideration.

E. *Name*

The name of an NOC must reflect the territorial extent and tradition of that country, and must be approved by the IOC.

F. *Flag and Emblem*

The flag and the emblem used by an NOC at the Olympic Games shall be submitted to and approved by the Executive Board of the IOC.[1]

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BYE-LAWS

TO RULES 6 AND 53

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2. Every NOC shall be responsible to the IOC within its country for the due observance of Rule 6 and its bye-law. It shall take steps to secure that any use of the Olympic flag, symbol, flame or motto which is in breach of this Rule and bye-law thereto shall be discontinued. It shall also endeavour to secure for the IOC protection for the terms "Olympic" and "Olympiad".

• • • •

8. An NOC that wishes to use its Olympic emblem for commercial purposes, whether such use be by that NOC itself or through the agency of a third party to whom the NOC is contractually or otherwise bound, shall be deemed to have undertaken to observe this bye-law and to secure its observance by third parties. The use of the emblem for advertising, alcoholic beverages or tobacco is strictly prohibited.

• • • •

TO RULE 63

The sovereign or Head of State who has been invited to open the Olympic Games shall be received at the entrance of the stadium by the President of the IOC and by the President of the OCOG. The two Presidents shall conduct the sovereign or Head of State and his retinue

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[1] See also bye-laws to Rules 6 and 53.

to his box in the stand of honour where he shall be greeted with his anthem.

The parade of the participants shall then follow. Each delegation dressed in its official uniform must be preceded by a name-board bearing its name and must be accompanied by its flag.

No participant in the parade is permitted to carry cameras, flags, banners, etc. on the field during the opening and closing ceremonies. Any participant committing a breach of the above regulations, will be liable to sanctions according to Rule 23. The OCOG shall see that these provisions are carried out.

The contingent shall parade in alphabetical order according to the language of the country organizing the Olympic Games, except that Greece shall lead the parade and the organizing country shall bring up the rear. Only those who are competing in the Olympic Games, and no more than four non-competitors in each delegation, shall parade.

The delegations shall salute the sovereign or Head of State of the country by turning their heads toward his box, with no other demonstration. The flags of the participating delegations, as well as the name-boards and their bearers, shall be furnished by the OCOG and shall all be of equal size. Each contingent, after completing its march around the stadium, shall line up in the centre of the field and maintain its position in a column behind its name-board and flag facing the stand of honour.

The President of the OCOG, accompanied by the President of the IOC, shall then proceed to the rostrum placed on the field in front of the stand of honour where he shall introduce the President of the IOC in the following words:

"I have the honour to introduce . . ., President of the International Olympic Committee, to whom I extend the warmest welcome."

The President of the IOC shall then mount the rostrum, and deliver a brief speech of welcome, of not more than three minutes, concluding with the words:

"I have the honour to invite . . . (the sovereign or Head of State) *to proclaim open the Games of the . . . Olympiad of the modern era, initiated by Baron Pierre de Coubertin in 1896* (or *of the . . . Olympic Winter Games*)."

The sovereign or Head of State shall then say:

"I declare open the Games of . . . (name of city) *celebrating the . . . Olympiad of the modern era* (or *the . . . Olympic Winter Games*)."

Immediately a fanfare of trumpets shall be sounded and, to the strains of the Olympic anthem, the Olympic flag shall be slowly raised on the flagpole erected in the arena.

A symbolic release of pigeons precedes the arrival of the Olympic flame, brought from Olympia by a relay of runners, the last of whom, after circling the track, shall light the sacred Olympic fire which shall not be extinguished until the close of the Olympic Games.

The solemn Olympic oath shall be then taken in the following ceremony:

The flag bearers of all countries shall advance and form a semicircle around the rostrum; an athlete of the country where the Olympic Games are taking place shall then advance to the rostrum; he shall mount the rostrum and, holding a corner of the Olympic flag in his left hand, and removing his hat, shall raise his right hand and take the following oath on behalf of all the athletes:

"In the name of all the competitors I promise that we shall take part in these Olympic Games, respecting and abiding by the Rules which govern them, in the true spirit of sportsmanship, for the glory of sport and the honour of our teams."

Immediately after, a judge of the host country shall then advance to the rostrum and similarly take the following oath on behalf of all the judges and officials:

"In the name of all the judges and officials, I promise that we shall officiate in these Olympic Games with complete impartiality, respecting and abiding by the Rules which govern them, in the true spirit of sportmanship."

The anthem of the organizing country shall then be played or sung. The participants shall then leave the arena by the shortest route.

The official ceremony according to the protocol described above so comes to an end. Only then may any artistic programme and the competitions take place.

In the case of an opening ceremony being authorized by the IOC to be held at a secondary Olympic venue, the rules of protocol described above shall not apply, but the OCOG must submit details of the ceremony in advance to the IOC (at least one year).

TO RULE 64

Medals and diplomas

In individual events the first prize shall be a silver-gilt medal and a diploma, the second prize a silver medal and a diploma, and the third prize a bronze medal and a diploma. The medals must bear the name of the sport concerned and be fastened to a detachable chain or ribbon to be hung around the neck of the athlete. Diplomas but not medals shall also be awarded for the fourth, fifth, sixth, seventh and eighth places, if any. All participants in a tie for first, second and third places shall be entitled to receive a medal and a diploma.

Prize medals shall be at least 60 mm, in diameter and 3 mm thick. The first and second place medals shall be of silver of a fineness of at least 925/1000 and the first place medal shall be heavily gilded containing at least 6 g of pure gold.

In team sports and in team events included in other sports, except those of an "artificial" nature (i.e. those in which placings are determined by position of the contestant in the individual competition), each member of a winning team participating in at least one match or competition held during the Olympic Games shall be awarded a silver-gilt medal and a diploma, each member of the second team a silver medal and a diploma, and each member of the third team a bronze medal and a diploma. The other members of these teams are awarded diplomas but no medals. In "artificial" team events only one medal shall be given to the team and its members shall receive diplomas only. Members of teams placed fourth, fifth, sixth, seventh and eighth, if any, shall be awarded diplomas only.

All competitors and officials in the Olympic Games shall receive a diploma and a commemorative medal.

The names of all winners shall be inscribed upon the walls of the main stadium where the Olympic Games have taken place.

Diplomas and commemorative medals shall be given to all non-competitors who are officially attached to Olympic teams and are recognized by the NOC of their country within the limits of the numbers laid down in Rule 37 and its bye-law.

The members of the IOC, the Presidents and Secretaries General of the IFs recognized by the IOC and of the NOCs who are present at the Olympic Games, as well as judges, referees, timekeepers, inspectors, umpires, etc., officiating at the Olympic Games and officially appointed by the IOC shall also be given diplomas and commemorative medals according to scales fixed by the IOC.

The medals and diplomas distributed on the occasion of the Winter Games must be different from those of the Games of the Olympiad.

No diplomas or commemorative medals shall be awarded to competitors or members of an NOC who did not take any part in the Olympic Games or who withdrew from them.

No prizes or awards other than those described above shall be given at the Olympic Games, and all surplus medals and diplomas shall be delivered up to the IOC.

If an Olympic competitor is disqualified, his medal and diploma must be returned to the IOC. If this is not done, the NOC shall be liable to suspension.

The OCOG shall ensure that a valid assignment of the copyright in the medals referred to in this Rule is made by all the designers thereof in favour of the IOC which shall *ipso facto* be the recognized owner of the copyright. If the law of the country requires that an assignment must be made in writing, the OCOG shall be obliged to draw up the necessary document to have it signed by all necessary parties and deliver it to the IOC which shall thereupon be the sole person entitled to make any disposition of such copyright.

The OCOG must hand over the moulds of all medals and all surplus medals to the IOC after the Olympic Games.

TO RULE 65

The medals shall be presented during the Olympic Games by the President of the IOC (or a member selected by him), accompanied by the President (or his deputy) of the IF concerned, if possible immediately after the event at the place where the competition was held and in the following manner: the competitors who have been judged first, second and third take their places, in their official uniform, on a stand in the stadium facing the stand of honour, with the winner slightly above the second who is on his right and the third who is on his left. The flag of the winner's delegation shall be

hoisted on the central flagpole and those of the second and third on adjoining flagpoles on the right and on the left, as they face the arena. Meanwhile the anthem (abbreviated) of the winner's delegation is played, during which the three competitors and the spectators shall face the flags.

TO RULE 66

The closing ceremony must take place in the stadium at the conclusion of the last event. The bearers of the flags of the participating delegations shall march into the arena in single file behind bearers of their name-boards in the same order and shall take up the same positions in the centre of the field as in the opening ceremony. Behind them six competitors of each delegation who came to participate in the Olympic Games shall march, eight or ten abreast, without distinction of nationality united only by the friendly bonds of Olympic sport.

The flag bearers shall then form a semi-circle behind the rostrum.

The President of the IOC shall then proceed to the foot of the rostrum. To the strains of the Greek national anthem, the Greek flag shall then be hoisted on the flagpole that stands to the right of the central flagpole used to hoist the winners' flags. The flag of the host city's country shall then be hoisted on the central flagpole, while its anthem is played. Finally the flag of the country of which the city has been selected to organize the next Olympic Games shall be hoisted on the left-hand flagpole to the strains of its anthem.

The President of the IOC shall then mount the rostrum and pronounce the closing of the Olympic Games in the following words:

"*In the name of the International Olympic Committee I offer to . . . and to the people of . . .* (name of the sovereign or Head of State and name of the country),

to the authorities of the city of . . . (name of the city) *and to the Organizing Committee of the Games, our deepest gratitude. I thank the competitors, officials, spectators, the media and all those who have contributed to the success of these Games. I declare the Games of the . . . Olympiad* (or *the . . . Olympic Winter Games) closed and, in accordance with tradition, I call upon the youth of all countries to assemble four years from now at . . .* (in case the city has not yet been chosen, the name of the city is replaced by the words: *the place to be chosen), there to celebrate with us the Games of the . . . Olympiad* (or *the . . . Olympic Winter Games).*"

The Mayor of the city organizing the next Olympic Games shall then join the President of the IOC on the rostrum. A representative of the city where the Games of the Olympiad have just been held shall deliver the official Olympic flag (of embroidered satin presented in 1920 by the Belgian Olympic Committee) to the President of the IOC who shall hand it over to the Mayor. For the Winter Games there is another flag, presented in 1925 by the city of Oslo. The flags must be kept in the principal municipal building of the city organizing the next Olympic Games until the closing ceremony.

A fanfare shall then be sounded and the Olympic flame extinguished, and to the strains of the Olympic anthem, the Olympic flag shall slowly be lowered from the flagpole and carried horizontally from the arena by a group of eight men in uniform. A salute of five guns shall follow: the choir shall sing and then the standard and flag bearers and the competitors shall march out to the sound of music.

ADDENDUM H

[Excerpts]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. 83-278

UNITED STATES OLYMIC COMMITTEE,
Plaintiff

v.

MILLSPORT, INC., *et al.*,
Defendants

Civil Action No. 83-44

INTERNATIONAL SPORTS MARKETING, INC.

v.

INTERNATIONAL OLYMPIC COMMITTEE, and
UNITED STATES OLYMPIC COMMITTEE,

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

• • • •

II. Findings of Fact.

• • • •

10. As found by this court in CA 83-44 (April 27, 1983)

> The [U.S. Olympic Committee's] primary purpose is to supervise the raising and expending of funds to field American teams for the winter and summer Olympic Games. These funds are raised by selling the right to associate a product with the Olympic Movement and by soliciting contributions from private individuals in exchanges for items of merchandise displaying the Olympic symbol—five interlocking rings—in combination with various graphics and other Olympic-related terminology.

The USOC is federally chartered; it organizes and implements, as well as finances, the representation of the United States in the Olympic games.

11. On the uncontradicted testimony of Colonel Miller, which the court finds credible, the court finds that there are 153 countries with National Olympic Committees, that the USOC is unique among them in not having formal support from the government, that the USOC with an $80.1 million budget receives some 44.6% of its income from its 44 corporate sponsors and 36% from contributions and spends less than 8% for the purpose of sending athletes to the games, using the balance to operate a training center program and a sports medicine center, as well as educational programs and the National Sports Festival. The USOC budget is about twentieth in the world in rank, with the U.S.S.R. spending most on the Olympics and East Germany the next.

12. The USOC rejected the Intelicense program and proposals for the marketing of pictograms because it would dilute the market in terms of the USOC's obtaining corporate sponsors and because the Intelicense pro-

posal would also tend to dilute the market for the up to two million gold and fifty million silver coins to be minted by the United State Mint and sold pursuant to U.S. law under the agreement between the Treasury of the United States and USOC contained in USOC Exhibit 20.

13. The USOC has entered into contractual agreements with approximately 100 of the NOCs whereby they will receive 4% of the proceeds from the gold coins which will sell for $250 or the silver coins which will have a $10 surcharge. Direct mail, with "donor award" items such as key chains and belt buckles using the Olympic symbol as an incentive, is a principal method of fundraising by the USOC for individuals.

14. The USOC conducts a corporate participation program to obtain funding from business. Under this program, participants or sponsors are authorized to identify one or more products or services with the USOC, the U.S. Olympic Team or with the United States Olympic Training Center during a four-year Olympiad. Only one participant is authorized exclusively by the USOC in any category of products or services. Corporations participating in this program make a minimum guaranteed monetary contribution to the USOC; they also contribute products or services.

• • • •

18. One important and the court finds a typical USOC corporate sponsor is Levi Strauss & Company, its sponsorship or participation agreement being USOC Exhibit 18. Levi Strauss will be investing $50 million in a four-year public relations and promotion program in connection with the forthcoming Olympic Games and will be using Olympic emblems in the United States and at Los Angeles in connection with the advertising of Levi Strauss products. Levi Strauss sells in Sears, Penney's, Mervin's, and other large chains some $2 billion worth of merchandise per year. To date it has invested in excess of $60 million in products bearing the Olympic logo. Levi

Strauss sought to do business with the NOCs of various other countries but was able to negotiate contracts only with Canada, Mexico, and Japan. Exclusivity is a vital component of the Levi Strauss sponsorship; if it did not have an exclusive arrangement in connection with its products for the use of the Olympic symbols, it would not deal with the USOC. The Olympic five rings symbol is part and parcel of the exclusive commitment.

• • • •

III. Conclusions of Law

• • • •

The congressional intent in enacting section 380 was to promote the U.S. Olympic effort by entrusting to the USOC alone the right to use and control the commercial exploitation of Olympic designations in the United States. Since the USOC is not supported by government funds but by contributions from the private sector, the Act expressly empowers the USOC to authorize "contributors and suppliers" to use the Olympic symbol and subjects anyone who uses the symbol "for the purpose of trade" without the consent of the USOC to civil sanctions in actions brought by it. *See generally Stop the Olympic Prison v. United States Olympic Committee*, 489 F. Supp. 1112 (S.D.N.Y. 1980), where the plaintiff's poster was not used "for the purpose of trade" or "to induce the sale of any goods or services or to promote any theatrical exhibition, athletic performance or competition" and the court held that this use of the Olympic symbol did not violate the statute, 489 F. Supp. at 1121. The court nevertheless recognized that the purpose of section 380 was "to establish strong protection for the Olympic symbols, in part to insure the market value of licenses for their use. Recent experience has shown such licensing to be a substantial inducement for contributions from a wide variety of commercial corporations, and the draft-

ers of subsections (b) appear to have this certainly in mind." *Id.* at 1120.

• • • •

/s/ James L. Oakes
United States Circuit Judge
sitting by designation as
United States District Judge

[1983]

[*aff'd sub nom. USOC* v. *Intelicense Corp.*, 737 F.2d 263 (2d Cir.), *cert. denied*, 469 U.S. 982 (1984).

ADDENDUM 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 84-5515-RG

UNITED STATES OLYMPIC COMMITTEE
(a Federal non-profit corporation),
Plaintiff,

vs.

VARIOUS JOHN DOES,
Defendants.

FINAL JUDGMENT AND PERMANENT INJUNCTION AS TO DEFAULTING JOHN DOE DEFENDANTS

Plaintiff United States Olympic Committee ("USOC"), having duly commenced this action by filing the complaint herein against Various John Does alleging violation of its rights in connection with the five interlocking rings and word "Olympics" (collectively the "USOC" marks"); and service of the complaint having been made on the person identified in Exhibit A hereto as a John Doe defendant; and merchandise of said defendants having been impounded under order of this Court, which merchandise is further described in Exhibit A ("the infringing merchandise"); and said defendants having failed to contest said impounding of their merchandise or to appear herein or to respond to the complaint; and it appearing to the Court that judgment by default is appropriate; and the Court having determined that there is no just reason for delay of entry of judgment against said defendants;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, 36 U.S.C. § 380 and 15 U.S.C. § 1121, and the principles of pendent jurisdiction. This Court has jurisdiction over the parties to this suit and retains such jurisdiction for the purposes of any contempt proceeding or other enforcement action stemming from this action.

2. The complaint herein shall be deemed amended to add as defendants in their own name the persons identified in Exhibit A hereto.

3. The defendants identified in Exhibit A hereto, and the defendants' related business entities, agents, employees, representatives, servants, successors and assigns, and any and all persons acting by or under the defendants' authority or acting in concert or participation with the defendant are permanently enjoined from distributing, circulating, selling, offering for sale, advertising, promoting or displaying the infringing merchandise.

4. The infringing merchandise shall be delivered to the United States Olympic Committee for appropriate disposition.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that this judgment against said defendants can be entered forthwith pursuant to F.R.C.P. 54(b).

DATED: 6 Feb 1985.

/s/ Richard A. Gadbois, Jr.
RICHARD A. GADBOIS, JR.
Judge, U.S. District Court

EXHIBIT A

Infringer (s)	Merchandise	Nature of Infringement
Kamal Abdou	Beach mats	Star-in-motion & Olympic rings
Abutaleb Abourerr	T-shirts	Olympic rings
Adrian	T-shirts	Star-in-motion LA-in-motion
David Adrman	T-shirts & hats	Use of word Olympics
Floyd Aragon	Bumper stickers	Use of word Olympics
Andrew Armada	Spoons, key chains	Use of word Olympics and olympic rings
Adrian Arroyo	T-shirts	Use of word Olympics
William Atlas	Buttons	Olympic Rings Use of word Olympics
Douglas Augr	T-shirts	Stick figures & torch
Bill Baccerer	Scrolls	Use of word Olympics
Kim Bane	T-shirts	Olympic rings and star-in-motion
Anthony Barbetta	T-shirts	Use of word Olympics
Robert Barbosa	T-shirts	Use of word Olympics
Mike Barham	Bumper stickers	Star-in-motion
Mike Barrett	Certificates	Use of word Olympics
Ron Barros	T-shirts	Use of word Olympics & rings
Sharon Bell	Sunglasses	Olympic rings
Wolfson Bonner	Sunglasses	Olympic rings
Judy Browdy	Change purses	Use of word Olympics
Joseph Bruno	T-shirts	Olympic rings
Gary Brownstein	T-shirts	Star-in-motion
David Allen Burke	T-shirts	Olympic rings
James Butts	Mugs	Use of word Olympics
Carol's Florist	Spoons	Sam Eagle & use of word Olympics
Carlos Carllejo	T-shirts	Olympic rings
Lucia Castro	T-shirts	Olympic rings
Sam Chung	Key chains & T-shirts & spoons	Use of word Olympics star-in-motion & rings
Blake Coleman	Hats & T-shirts & Pins	Use of word Olympics & Rings & star-in-motion
Kay Coleman	T-shirts and hats	Olympic rings and star-in-motion
Johnnie Cochran	T-shirts	Star-in-motion

Infringer (s)	Merchandise	Nature of Infringement
Kathy Cox	Sunglasses	Olympic rings
Leonard Davis	T-shirts	Use of word Olympics
Richard Davis	Sunglasses	Olympic rings
Javier Delealle	Posters	Use of word Olympics
Denmarst	Blue cooler handbags	Use of word Olympics
Tom Dilbon	T-shirts	Use of word Olympics and Olympic rings
Jellidie Dudley	Sunglasses	Olympic rings
Dynaiaic Mkt. Sym.	Cooler bags	Use of word Olympics
Leslie Fegney	Buttons	
Lori Ferguson	Sunglasses	Olympic rings
Mary Fitzpatrick	Pins	Use of word Olympics & rings
Martin Fliderman	T-shirts	Olympic rings
Ignacis Fonsea	Stockers	Olympic rings
Larry Garrett	Gold medals	Use of word Olympics
Bill Gilbert	Visors	Star-in-motion & Olympic rings
Mohammed Reda Grady	T-shirt	Olympic rings
Tawld Gregado	T-shirts	Olympic rings
Joydeep Ghosm	T-shirts	Olympic rings
Mitchell Greenback	T-shirts	Use of word Olympics
Torres Guadalupe	Pins	Olympic rings
Leon Hall	T-shirts	Use of word Olympics and rings
Yvette Holayer	Keyrings	Star-in-motion
Hollywood Stars	T-shirts	Olympic rings
Chung Joon Hwa	T-shirts	Olympic rings
Chube Ikpuazy	T-shirts	Use of word Olympics
Judy Johnson	Buttons	Use of word Olympics
Alvin Jones	T-shirts	
Jackie Jones	T-shirts	Olympic rings
Janine Jones	Key rings	Use of word Olympics
Dean Katz	Buttons & bumper stickers	Olympic rings
Kaap Koong	Pins	Olympic rings
Steve Kotish	T-shirts	Use of word Olympics
Don Lennon	T-shirts	U.S.A.-in-motion
Hubert Lester	Key rings	Use of word Olympics

Infringer(s)	Merchandise	Nature of Infringement
Ron Liebirnis	T-shirts	Olympic rings
Humberto Lopez	Pins	Use of word Olympics
Amir Magahab	Cooler bags	Use of word Olympics
Michael Maier	T-shirts	Olympic rings
James McGrata	Buttons & bumper stickers	Olympic rings
Brenda McMay	T-shirts	Use of word Olympics
Pat McKay	T-shirts	Olympic rings
Vernon McMurry	Buttons	Olympic rings
Chris Metoyer	Wallets	Use of word Olympics
Isidra Medina	Medals & buttons	Olympic rings and star-in-motion
Talib Mohammed	T-shirts	Olympic rings
El Gabra Molaz	T-shirts	Olympic rings
Linda Moritz	T-shirts	Star-in-motion
Robert Mott	Posters	Use of word Olympics
Nanette Newbury	T-shirts	Olympic rings
Rory O'Flaherty	Magazines	Use of word Olympics
Laura Onate	Key rings, pens, t-shirts	Olympic rings
Johnny Otero	Buttons	Use of word Olympics
Marida Patron	T-shirts	Olympic rings
Gary Allen Pavlenkov	Glasses	Olympic rings
James Pelle	Patches	Star-in-motion
Tony Petterson	Posters	Use of word Olympics
Richard Pinkard	T-shirts	Use of word Olympics
David Powers	T-shirts	Use of word Olympics
Tabo Pubill	Hats	Sam Eagle & star-in-motion
David Quan	T-shirts	Olympic rings
Rargeb	T-shirts	Olympic rings
Jogl Resnlgoff	T-shirts	Use of word Olympics
Melvyn Richardson	Visors & hats	Star-in-motion and Olympic rings
Joanie Rig	T-shirts	Olympic rings
Tony Rivera	T-shirts	Star-in-motion
Brian Roberts	Star hats	Use of word Olympics
Charles Romero	Posters	Use of word Olympics
Michael Roms	Buttons	Olympic rings
Adam Rosenbaum	Buttons	Olympic rings

Infringer (s)	Merchandise	Nature of Infringement
Daniel Rosenbaum	Buttons & bumper stockers	Olympic rings
David Rosenbaum	T-shirts	Olympic rings
Wayne Ross	Plastic visors	Use of word Olympics, star-in-motion and Olympic rings
Armondo Salas	Posters	Olympic rings
Brenda Gail Seales	Decorative plates	Use of word Olympics
Judith Seller	Keychains	Olympic rings
Jim Sellers	Hats (painters)	Use of word Olympics and rings
Anthony Seruto	T-shirts	Use of word Olympics
Frank Shaw	Buttons	Use of word Olympics
Diane Shoenbaum	Sunglasses	Olympic rings
Sameerad Somag	Sunglasses	Olympic rings
Ed Soules	T-shirts	Olympic rings
D.E. Sparks	Necklaces	Olympic rings
Edward Sparks	Ceramics necklaces & Ceramic banks	Olympic rings
Lisa Spillman	T-shirts	Use of word Olympics star-in-motion
Allen Stein	Hats	Use of word Olympics & Olympic rings
Marvin Stein	Visors	Olympic rings
Keven Strachan	T-shirts	Olympic rings
Sunset Sales	T-shirts	Olympic rings
Tandem Merchandising	T-shirts	Use of word Olympics
Thomas Teichman	Paperweights	Olympic rings
Gregore Turneir	T-shirts	Star-in-motion & rings
Tom Vocatura	Posters	Use of word Olympics
Ben Warren	T-shirts	Star-in-motion
Alan Werschler	T-shirts and hats	Star-in-motion
Tuowg Wgoyen	T-shirts	Olympic rings
Mike Yingst	Hats & Fans	Use of word Olympics
Robert Yocatura	Posters	Olympic rings
Zenzi	Bumper stickers	Olympic rings
Unidentifiable John Does	T-shirts & hats & fans & certificates & bumper stickers & sunglasses & mugs	Star-in-motion and Olympic rings and use of word Olympics and Sam the Eagle